Federal Service Impasses Panel

500 C Street, SW. Washington, D.C. 20424

Information Announcement December 11, 1991

BRUBECK NAMED CHAIRMAN OF PANEL

The President has announced his intention to appoint Edwin D. Brubeck, a lifelong resident of Indianapolis, Indiana, as Chairman of the Federal Service Impasses Panel. Mr. Brubeck, currently a Member of the Panel, with a term expiring in January 1995, succeeds Roy M. Brewer as Chairman. Mr. Brewer will continue as a Member of the Panel until his term expires in January 1994.

The Panel, an entity within the Federal Labor Relations Authority, assists Federal agencies and labor organizations representing Federal employees in the resolution of negotiation impasses. Under the Civil Service Reform Act of 1978 the President appoints a chairman and at least six other members from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. They serve on a part-time basis and have 5-year terms.

Mr. Brubeck, a longtime business representative and legislative consultant to the Indiana State Building Trades, was appointed to the Panel in 1990. He has lobbied extensively at the Indiana General Assembly for job-creating legislation affecting the construction industry. He has also served three terms as Chairman of the Indiana Occupational Safety Standards Commission. He attended Indiana University/Purdue University of Indianapolis and also has lectured at Purdue University, Indiana University, and Indiana Central University. Mr. Brubeck is married and has three children.

For further information
(202) 382-0981

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT December 12, 1990

Federal Register, Vol. 55, No. 239, page 51115:

Proposed Rules

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing Representation and Unfair Labor Practice Cases

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of opportunity to file recommendations on modifications to the representation and unfair labor practice regulations.

SUMMARY: The Authority and the General Counsel invite all agencies, unions and interested persons to submit written recommendations on modifications to the Authority and General Counsel representation, unfair labor practice and related miscellaneous regulations.

The Authority and the General Counsel intend to examine existing unfair labor practice, representation and related miscellaneous regulations to determine whether modifications should be made to improve case processing procedures and promote the earliest resolution of disputes. The Authority and General Counsel also intend to identify any portion of the regulations that could be rewritten so that the processing of unfair labor practice charges and complaints and representation petitions can be more easily understood by persons who are not practitioners in labor-management relations or the law

This review process will be comprehensive and pertain to all phases of the processing of unfair labor practice charges and complaints and representation petitions. Recommendations are solicited on the filing, investigation and settlement of unfair labor practice charges, and on the litigation and settlement of unfair labor practice complaints. Suggestions which promote the earliest resolution of disputes and the expedition of unfair labor practice hearings are encouraged.

The review also will cover all procedures employed to process representation issues. Recommendations are solicited on the filing and investigation of the various representation petitions, as well as the hearing, decision-making and election processes.

Proposed regulations which may result from the review will be published for comment at a later date.

DATES: Recommendations in response to this notice will be considered if received by February 15, 1991. Requests for extensions of time will not be granted absent extraordinary circumstances.

ADDRESSES: Mail recommendations to David L. Feder, Assistant General Counsel for Legal Policy and Advice, Office of the General Counsel, Federal Labor Relations Authority, 500 C Street, SW., Room 326, Washington, DC 20424, Attn: "Regulation Review."

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel for Legal Policy and Advice, Office of the General Counsel, 500 C Street, SW., Room 326, Washington, DC 20424, Telephone: (202) 382–0834.

SUPPLEMENTARY INFORMATION: The Authority and the General Counsel of the Federal Labor Relations Authority intend to review and, where appropriate, revise the unfair labor practice and representation regulations. These rules of practice and procedure were last reviewed in a study started in 1984 (49 FR 25243 and 35096), culminating in minor amendments to the regulations in December 1986 (51 FR 45751).

Part 2422 of chapter XIV of title 5 of the Code of Federal Regulations (1990) contains the current regulations governing the processing of representation petitions. The unfair labor practice regulations are contained in part 2423. Part 2429 contains miscellaneous and general regulatory requirements which also govern the processing of representation petitions and unfair labor practice charges and complaints.

All of these regulations and rules of practice and procedure governing the processing of representation and unfair labor practice matters are subject to this review. The Authority and the General Counsel will, as determined appropriate, undertake a thorough review of existing regulations and rules of practice and procedure and will review all written recommendations. The Authority and the General Counsel will, as determined appropriate, issue proposed amendments to the existing representation, unfair labor practice and miscellaneous regulations. All agencies, unions and interested persons will be afforded an opportunity to submit comments on any proposed modifications to the existing regulations.

All submissions should contain proposed regulatory language in addition to comments supporting the recommended regulatory change. This review is limited to modifications to the existing regulations and rules of practice and procedure. Recommendations which seek to overrule substantive interpretations of the Statute by the Authority and the circuit courts of appeals concerning the rights and obligations of agencies, unions and employees under the terms of the Statute will not be considered.

Format

All submissions should contain separate headings and citations for each section of the existing regulations discussed. An original and (2) copies of each set of comments, with any enclosures, should be submitted only on 8½ by 11 inch paper.

List of Subjects in 5 CFR Ch. XIV

Administrative practice ad procedure, Government employees, Labor-management relations.

Dated: December 4, 1990.

For the Authority.

Solly Thomas,

Executive Director.

For the General Counsel.

Michael Doheny,

Deputy General Counsel.

[FR Doc. 90–28940 Filed 12–11–90; 8:45 am]

BILLING CODE 6727–01–M

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT — NOVEMBER 15, 1990

CORRECTED NOTICE FOR THE REPRINT OF THE AUTHORITY'S STATUTE

THOSE AGENCIES WHO SUBMITTED A STANDARD FORM 1 RIDING PRINT ORDER NO. 40000 MUST RESUBMIT A STANDARD FORM 1 WITH THE CORRECTED PRINT ORDER NUMBER.

Government agencies desiring to acquire their own stock of the publication entitled: The Federal Service Labor-Management Relations Statute, 3-1/3" x 5-1/4" pocket-size Statute may have their printing procurement officer furnish a Standard Form 1 to the Government Printing Office, Washington, D.C. 20402, on or before December 6, 1990 with the **CORRECTED PRINT ORDER NO. 20101.**

If you have any questions you may contact Debra Bruce at (202) or FTS 382-0771.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT July 5, 1990

NOTICE OF PUBLICATION OF FLRA VOLUME NO. 35

The Federal Labor Relations Authority has prepared for publication by the Government Printing Office its thirty-fifth bound volume of decisions. Also, as announced previously, the Authority is publishing Volume 34. These volumes include the decisions of the Authority that were issued during the following periods:

VOLUME	STATUS	PERIOD COVERED	APPROX PAGES	FLRA REQ. NUMBER
34	P	Sep 1, 1989 - Feb 28, 1990	1200	0-00035
35	C	March 1, 1990 - May 31, 1990	1300	0-00048

P = Previously Announced; C = Current Announcement.

These publications, entitled Decisions of the Federal Labor Relations Authority, Volumes 34 and 35, may be obtained by Federal agencies on a prorated cost basis with the Authority by "riding" the FLRA Requisition Number listed above. In order to avoid duplicate orders, agency, district and regional offices should request their agency's national headquarters in Washington, D.C. to order the volume.

Agency rider requisitions (Standard Form 1) should be submitted to the Government Printing Office, Washington, D.C. 20401, no later than the due date listed below:

VOLUME	STATUS	DATE REQUISITION DUE AT GPO
34	P	Past Due (May 18, 1990)
35	C	July 31, 1990

All publications will be offset printed on both sides of white, approximately 8" x 10 1/4", 100 lb. book stock with hard binding. Agencies are urged to submit requisitions to the Government Printing Office because the Superintendent of Documents will not stock large quantities of the publications and the Authority will not stock any books other than for its own staff needs.

Other organizations and individuals may order the publications directly from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402 when they become available. Further information concerning orders will be provided by the Authority in an Information Announcement at that time.

Federal Labor Relations Authority

Washington, D.C. 20424

NOTICE June 22, 1990

The Authority is revising and printing its publication entitled: A Guide to the Federal Service Labor-Management Relations Statute. Government agencies desiring to acquire their own stock of the Guide may have their Washington, D.C. printing procurement officer furnish a Standard Form 1 to the Government Printing Office, Washington, DC 20402, on or before July 13, 1990, by riding FLRA's Requistion No. 0-00051.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT June 20, 1990

NOTICE OF PUBLICATION OF FLRA VOLUME NO. 35

The Federal Labor Relations Authority has prepared for publication by the Government Printing Office its thirty-fifth bound volume of decisions. Also, as announced previously, the Authority is publishing Volume 34. These volumes include the decisions of the Authority that were issued during the following periods:

VOLUME	STATUS	PERIOD COVERED	APPROX PAGES	FLRA REQ. NUMBER
34	P	Sep 1, 1989 - Feb 28, 1990	1200	0-00035
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News Release

Federal Labor Relations Authority

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT June 20, 1990

Pamela Talkin Reappointed Member of the Federal Labor Relations Authority

Pamela Talkin has been reappointed to a full 5-year term as a Member of the Federal Labor Relations Authority. Nominated by the President on April 30, 1990 and confirmed by the Senate on June 8, 1990, the term of appointment is until July 1, 1995. Ms. Talkin has served as a Member of the Authority since November 30, 1989.

Prior to her appointment to the Federal Labor Relations Authority, Ms. Talkin served as Chief of Staff for the Equal Employment Opportunity Commission in Washington, D.C. from 1986-1989. She was Assistant Regional Director for the National Labor Relations Board, Region 20 in San Francisco, California, from 1984-1986. Ms. Talkin has also served as: Special Assistant to a Commissioner of the Equal Employment Opportunity Commission from 1984-1985; Supervisory Compliance Officer for the National Labor Relations Board, Region 20, from 1981-1983; Labor-Management Relations Examiner for the National Labor Relations Board, Region 20, from 1973-1981; and National President for the National Labor Relations Board Union from 1977-1981.

Ms. Talkin graduated from City University of New York, Brooklyn College, with a Bachelor's degree in 1968 and a Master's degree in 1971. She resides in Washington, D.C.

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT

JUNE 14, 1990

Chairman Jean McKee today announced the appointment of N. Victor Goodman to the Foreign Service Impasse Disputes Panel. Established under Chapter 10 of the Foreign Service Act of 1980 and effective February 15, 1981, the Panel assists the parties in resolving negotiation impasses arising in the course of collective bargaining. The five Panel members, one of whom serves as Chairman, are selected from among individuals knowledgeable in labor-management relations or the conduct of foreign affairs, to include two members of the Foreign Service, one member employed by the Department of Labor, one member of the Federal Service Impasses Panel (FSIP), and one public member who does not hold any other office or position in the government. Mr. Goodman was selected by Roy M. Brewer, Chairman of the Federal Service Impasses Panel, to serve as the FSIP member with a term expiring in 1992.

Mr. Goodman, a member of the FSIP since 1982, currently practices law in Columbus, Ohio as partner in the firm of Benesch, Friedlander, Coplan and Aronoff. He belongs to the Labor Law Section of the Ohio State Bar Association and is a member of the American Bar Association's Committee on Development of Law Under the National Labor Relations Act. Mr. Goodman was also a permanent umpire under the National Coal Mine Construction Agreement between the United Mine Workers and the Association of Bituminous Contractors.

He is a member of the Ohio Board of Regents, the Rickenbacker Port Authority, the Ohio State Underground Parking Commission, and was a Federal Bar Examiner for the United States District Court for the Southern District of Ohio from 1973 to 1976. Mr. Goodman graduated from Yale University with a B.A. degree in 1957 and received a J.D. degree from Harvard Law School in 1961. Currently residing in Bexley, Ohio, Mr. Goodman is married and has four children.

Other members of the Foreign Service Impasse Disputes Panel, all of whom serve on a part-time basis, are Julius Balog, Jr., the Department of Labor member, Anthony M. Kern, a Foreign Service member from the Department of State, and Dianne Blane, a Foreign Service member from the Agency for International Development. The Chairman of the Panel is Margery F. Gootnick, a labor arbitrator-mediator and practicing attorney.

For further information,
telephone (202) 382-0981

Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT May 11, 1990

NOTICE OF PUBLICATION OF FLRA VOLUME NO. 34

The Federal Labor Relations Authority has prepared for publication by the Government Printing Office its thirty-fourth bound volume of decisions.:

VOLUME	STATUS	PERIOD COVERED	APPROX. PAGES	FLRA REQ. NUMBER
34	C	Sep 1, 1989 -- Feb 28, 1990	1200	0-00035

C = Current Announcement.

This publication, entitled Decisions of the Federal Labor Relations Authority, Volume 34 may be obtained by Federal agencies on a prorated cost basis with the Authority by "riding" the FLRA Requisition Number listed above. In order to avoid duplicate orders, agency, district and regional offices should request their agency's national headquarters in Washington, D.C. to order the volume.

Agency rider requisitions (Standard Form 1) should be submitted to the Government Printing office, Washington, D.C. 20401, no later than the due date listed below.

VOLUME	STATUS	DATE REQUISITION DUE AT GPO
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Federal Labor Relations Authority

Washington, D.C. 20424

INFORMATION ANNOUNCEMENT April 18, 1990

NOTICE OF PUBLICATION OF FLRA VOLUME NO. 34

The Federal Labor Relations Authority has prepared for publication by the Government Printing Office its thirty-fourth bound volume of decisions.:

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Federal Labor Relations Authority

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT April 11, 1990

Recent Authority Decisions

The Federal Labor Relations Authority recently has issued several decisions of interest to the Federal labor relations community.

In United States Department of Justice, Bureau of Prisons, Safford, Arizona, 35 FLRA No. 56 (April 6, 1990), the Authority examined the issue of an appropriate remedy for the agency's violation of an employee's right to union representation during an investigatory interview. The Authority ordered the agency, upon request of the union and the employee, to repeat the interview affording the employee full representation rights, and then to reconsider the disciplinary action. The Authority concluded that this would best effectuate the policies of the Federal Service Labor-Management Relations Statute. The Authority further concluded that if, on reconsideration, the agency mitigates the discipline, the employee will be made whole for any losses suffered to the extent consistent with the decision on reconsideration.

The employee had been disciplined, in part, for alleged falsification, misstatement, or concealment of material facts at an investigatory interview. During the interview the agency denied the employee's union representative the right to participate. The Administrative Law Judge concluded the agency improperly denied union representation under section 7114(a)(2)(B) of the Statute. This provision affords the opportunity for union representation upon an employee's request where the employee believes the investigation may result in disciplinary action. The Judge recommended that the agency be required to rescind the employee's discipline and make the employee whole. The agency filed exceptions to the Administrative Law Judge's recommended remedy but did not except to the Judge's finding that the agency's instruction to the Union denying representation violated the Statute.

The Authority agreed with the agency that a make-whole remedy was not appropriate. In so doing, the Authority reaffirmed a previous Authority decision, Department of the Navy, Charleston Naval Shipyard, Charleston, South Carolina, 32 FLRA 222 (1988), holding that traditional make-whole

remedies would not be ordered where the only violation is the denial of an employee's request for representation at an investigatory interview. The Authority also held, however, that "a remedy limited to a cease and desist order will not adequately redress the wrong incurred by the unfair labor practice in cases where an employee has been denied the representation right" established by the Statute.

The Authority noted that the right to representation "is intended to benefit all parties" and that denial of the right "deprives all parties and the public interest of the benefits accruing from the statutory protection of employee rights to organize and participate through labor organizations in decisions affecting the employees." The Authority held that requiring the agency to repeat the investigatory interview and reconsider the discipline would: (1) afford the employee the protections provided by the Statute, (2) provide the employee with an opportunity for redress of harm, (3) promote employee confidence in the rights and procedures established by the Statute, and (4) deter violations of the Statute. The Authority concluded that the remedy "will protect employee rights and promote the efficiency of government--matters that Congress has determined to be in the public interest."

Other recent decisions of note are:

--Health Care Financing Administration, Department of Health and Human Services and American Federation of Government Employees, Local 1923, 35 FLRA No. 33 (March 28, 1990), where the Authority granted, in part, exceptions to an arbitration award filed by both the agency and the union. Among other things, the Authority addressed the following: arbitral authority to issue supplemental or clarified awards; findings necessary to award backpay under the Back Pay Act; requirements applicable to awards resolving requests for attorney fees; and resolution of grievances alleging violations of the Age Discrimination in Employment Act.

--Letterkenny Army Depot, 35 FLRA No. 15 (March 14, 1990), where the Authority discussed the analytical framework to be applied in cases alleging improper discrimination under section 7116(a)(2) of the Statute, concluding that the agency's failure to promote a union official was motivated solely by the official's union activity and that the agency's asserted reasons for its actions were pretextual. The Authority directed the agency to promote retroactively the union official and to make the employee whole for lost wages.

Copies of these decisions may be obtained from the Authority's Office of Case Control at (202) 382-0764.

Federal Labor Relations Authority

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT April 4, 1990

Chairman Jean McKee today announced the appointment of three members to the Foreign Service Impasse Disputes Panel. Established under Chapter 10 of the Foreign Service Act of 1980 and effective February 15, 1981, the Panel assists the parties in resolving negotiation impasses arising in the course of collective bargaining. The five Panel members, one of which serves as Chairman, are selected from among individuals knowledgeable in labor-management relations or the conduct of foreign affairs, to include two members of the Foreign Service, one member employed by the Department of Labor, one member of the Federal Service Impasses Panel (FSIP), and one public member who does not hold any other office or position in the Government.

Julius Balog, Jr. was reappointed as the Department of Labor member. Mr. Balog has been with the Panel since its inception and begins his fourth consecutive term which expires on April 23, 1993. He currently serves as Special Advisor to the Deputy Under Secretary for Labor Management Relations at the Department of Labor, prior to that he was Chief of the Division of Industrial Relations Services. He has served with 5 Presidential Emergency Boards, was a member of the Department of Labor's Study Team sent to Hungary to assess the country's labor needs preliminary to embarking on a market economy, co-authored the Railroad Shopcraft Factfinding Study, and assisted various foreign nations in establishing collective bargaining training programs.

Anthony M. Kern was reappointed to a second term which expires on March 29, 1993, as one of two members of the Foreign Service. Mr. Kern began his Foreign Service career in 1974 with the Department of State, after previously having been a member of the U.S. Civil Service for 18 years. Currently he is Labor Advisor to the Bureau of Inter-American Affairs, having played a similar role with the Bureau of African Affairs. Other assignments include Personnel Officer, Office of Employee Relations; Labor Officer, Barbados; Deputy Coordinator, Special Assistant to the Secretary and Coordinator of International Labor; and Labor Attache, New Delhi.

Dianne Blane was appointed to serve as the second Foreign Service member with a term expiring March 29, 1993. Ms. Blane has also been in both the U.S. Civil Service -- for 11 years -- and the Foreign Service which she entered in 1977. Her entire career has been with

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UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
500 C STREET SW. • WASHINGTON, D.C. 20424

OFFICE OF THE GENERAL COUNSEL

PRESS RELEASE

FOR IMMEDIATE RELEASE January 17,1990

Kathleen Day Koch, General Counsel for the Federal Labor Relations Authority, today announced the implementation of an on-going program to improve the format and content of the forms used by parties filing with FLRA Regional Offices. As the first phase of this program, several of the most commonly used forms have been redesigned and are now available for use. Ms. Koch:

> We saw a need to make our forms easier to understand and to use. Inexperienced filers frequently did not understand what was required to complete the forms correctly. Even experienced individuals occasionally did not provide all the information that would allow us to investigate their problem expediently and adequately. These new forms will benefit all parties by ensuring the early development of the information necessary to resolve the matters at issue.

With the exception of the "Notice" posters, each of the forms has been reduced to standard sized 8 1/2 x 11 paper, while actually increasing the amount of space available for the entry of filing information. In addition, the back of the forms has been used in several cases to provide more detailed directions on completion of the required material. Both the new format and the accompanying directions incorporate the principles of plain English.

Although filings on the old forms will continue to be accepted, the General Counsel's Office recommends that parties move to the new forms as soon as practical Single copies of the new forms may be obtained from the appropriate FLRA Regional Office. Any comments or suggestions for further forms improvement should be directed to:

Office of General Counsel
Federal Labor Relations Authority
Suite 326
500 C Street SW
Washington, D.C. 20424

(202) 382-0742 (FTS) 382-0742 FAX NO. (202) 382-0957 FAX FTS: 382-0957

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

PETITION

Complete instructions are on the back of this form.

Case No.	FOR FLRA USE ONLY
Case No.	
Date Filed	
Date Filed	

The Petitioner, if a union, states it has submitted to the activity/agency and the Assistant Secretary of Labor for Labor-Management Relations a roster of its officers and representatives, a copy of its constitution, bylaws, and statement of objectives.

1. PURPOSE OF PETITION (Check one) Explanations of the Petitions are on the back of this form.

_____ RO - CERTIFICATION OF REPRESENTATIVE (Union Petition)
_____ RA - REPRESENTATIVE STATUS (Activity/Agency Petition)
_____ DR - DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE (Employee Petition)
_____ CU - CLARIFICATION OF UNIT (Activity/Agency or Union Petition)
_____ AC - AMENDMENT OF RECOGNITION OR CERTIFICATION (Activity/Agency or Union Petition)
_____ DA - CERTIFICATION FOR DUES ALLOTMENT (Union Petition)

2. Name and Address of Activity/Agency Involved	3. Name and Address of Petitioner
4. Activity Contact: Name, Address, & Phone Number	5. Union/Individual Contact: Name, Address, & Phone Number

6. Description of Existing Unit or Unit Claimed Appropriate	7. Approximate Number of Employees in Unit
Included Excluded	Presently _____ Proposed By CU AC _____
	8. Is Petition Supported by 30% or More of Employees In Unit? * ☐ yes ☐ no
	* Not applicable in RA, CU, AC & DA

9. Name, Address, & Phone Number of Recognized or Certified Union (State if unknown or none)

10. Date of Recognition/Certification (Month, Day, & Year)	11. Expiration of Current Agreement (Month, Day, & Year)

12. Give Names, Addresses, & Phone Numbers of Unions Other Than Petitioner (Block 3) Which Have Shown An Interest In Any of the Employees in the Unit Set Forth in Block 6 Above.

A. NAME *(Local name and number, and national or international)*	B. AFFILIATION, IF ANY	C. ADDRESS *(Street and Number, City, State and ZIP Code)*	D. PHONE NO

13. I DECLARE THAT I HAVE READ THIS PETITION AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT. 18 U.S.C. 1001.

Type or Print Your Name	Your Signature	Date

FLRA Form 21
(Rev. 8/88)

INSTRUCTIONS:

Use this form if you want to file a petition dealing with the representation of Federal employees under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7111, 7112 and 7115. You may want to refer to the Rules and Regulations of the Federal Labor Relations Authority (FLRA) which deal with the filing and processing of petitions, Part 2422 of 5 C.F.R. for additional information on how to file a petition. The original and four (4) copies of a petition should be filed with the appropriate Regional Director, FLRA, along with a statement of any relevant facts not contained in the Petition and with a copy of all relevant correspondence relating to matters raised by the Petition. If you do not know the address of the Regional Director, you should contact the Office of the General Counsel, FLRA, in Washington D.C. on (202) 382-0742. Upon filing the Petition, you should serve a copy of the Petition and the accompanying materials on each known interested party such as the activity/ agency involved, the union holding exclusive recognition, or any union who may have expressed an interest in representing any of the employees in the unit involved in the Petition. If more space than is provided on the form is required for any item, you should attach additional sheets numbered according to the item to which they pertain. The showing of interest and an alphabetical list of names constituting such showing, as required by the Statute and the FLRA's Regulations, shall be filed with the original petition, but should not be furnished to any other party or person. A list (including names and addresses) of those parties served with a copy of the petition should be submitted with the petition.

1. PURPOSE OF THIS PETITION

_____ RO-CERTIFICATION OF REPRESENTATIVE (Labor Organization Petition) - A substantial number of Federal employees wish to be represented for purposes of exclusive recognition by Petitioner and Petitioner desires to be certified as exclusive representative of employees.

_____ RA-REPRESENTATIVE STATUS (Agency Petition) - The Agency has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the existing unit or that, because of a substantial change in the character and scope of the unit, it has a good faith doubt that such unit is now appropriate. Attach statement containing detailed explanation of the reasons supporting the good faith doubt.

_____ DR-DECERTIFICATION OF EXCLUSIVE REPRESENTATIVE (Employee Petition) - A substantial number of Federal employees assert that the currently recognized or certified labor organization no longer represents a majority of the employees in the unit.

_____ CU-CLARIFICATION OF UNIT (Agency or Labor Organization Petition)- Petitioner seeks clarification of an existing appropriate unit:
(Check one) _____ Previously recognized _____ Previously certified in Case No. _____

_____ AC-AMENDMENT OF CERTIFICATION(Agency or Labor Petition)-Petitioner seeks amendment of unit previously certified in Case No. _____. Attach statement of amendment sought and reasons for request.

_____ DA-CERTIFICATION FOR DUES ALLOTMENT(Labor Organization)-Ten percent or more of Federal employees in an appropriate unit are members of the petitioning labor organization.

2. Give the full mailing address for the activity/agency involved in the petition. Include street number, city, state, and zip code.
3. Give the full mailing address for the union (or individual) filing the petition. If the union is affiliated with a national organization, give both the local designation and national affiliation.
4. and 5. This information is very important to the prompt handling of your petition. Be as specific and as accurate as possible in identifying the contact persons for these parties including their current work phone numbers. You may also want to include your home phone number as well to assist in the investigation of your petition.
6. Describe the unit which is currently recognized/certified or the unit you believe appropriate. In a CU Petition, describe present unit and attach description of proposed clarification and the reasons for the request.
7. Indicate the approximate number of employees in the existing unit or the unit claimed to be appropriate . Where appropriate, e.g., CU petition identify the approximate number of employees which would be in the existing unit after the clarification has been effected.
8. For appropriate petitions (RO and DR) 30% or more of the employees in the unit must sign a petition, authorization cards or other acceptable evidence indicating their interest in and support of the petition. A failure to timely submit this showing of interest may result in the dismissal of your petition. See 5 C.F.R. § 2421.16.
9. Identify the union holding exclusive recognition rights for the unit described in Block 6.
10. Indicate the date the union holding exclusive recognition status was recognized/certified—month, day, & year.
11. Indicate the date on which the current collective bargaining agreement will expire or when the most recent such agreement did expire—month, day, & year.
12. Identify the names, affiliations, addresses, and phone numbers of any union which has shown an interest in any of the employees in the unit set forth in Block 6.
13. Print or type your name, then sign and date signifying that the information provided is true and correct to the best of your knowledge and belief.

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

CHARGE AGAINST AN AGENCY

FOR FLRA USE ONLY
Case No.
Date Filed

Complete instructions are on the back of this form.

1. Name and address of charged activity or agency

2. Name and address of charging labor organization or individual

3. Activity or agency contact information
   Name:
   Title:
   Phone: ( )

4. Labor organization or individual contact information
   Name:
   Title:
   Phone: ( )

5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and _____

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

7. Have you or anyone else raised this matter in any other procedure? ☐ No ☐ Yes If yes, where? [see reverse] _____

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT. 18 U.S.C. 1001.

Type or print your name	Your signature	Date

INSTRUCTIONS:

Use this form if you are charging that a federal activity or agency committed an unfair labor practice under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7116. File the original and four copies with the appropriate Regional Director, Federal Labor Relations Authority. If you do not know that address, you should contact the Office of the General Counsel, Federal Labor Relations Authority, (202) 382-0742. **Send a copy of this Charge to the contact named in block 3.** See 5 CFR Part 2423 for an explanation of unfair labor practice proceedings.

1. Give the full mailing address for the activity (or agency) you are charging. Include street number, city, state, and zip code. If you are charging more than one activity/agency with the same act, attach its address using a separate sheet.

2. Give the full mailing address for the union (or individual) filing the charge. If the union is affiliated with a national organization, give both the national affiliation and local designation.

3. and 4. This information is essential to the investigation of your charge. Be as specific and accurate as possible. **It will assist the investigation if you include your home as well as work number.**

5. Identify which of the following subsections of 5 U.S.C. 7116 has or have been violated. Subsection (1) has already been selected for you because a violation of (2) thru (8) is an automatic violation of (1). List all sections violated.

§ 7116. Unfair labor practices

"**(a)** For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"**(1)** to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"**(2)** to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"**(3)** to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"**(4)** to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"**(5)** to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

"**(6)** to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"**(7)** to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

"**(8)** to otherwise fail or refuse to comply with any provision of this chapter.

6. It is important that the basis for the charge be both BRIEF and COMPLETE, and FACTUAL rather than opinion.
   - Give dates and times of significant events as accurately as possible.
   - Give specific locations when important; e.g., "The meeting was held in the supply department lunchroom, Building 36."
   - Identify who was involved, by title; e.g., "Chief Steward Pat Jones" or "Lou Smith, the File Room Supervisor."
   - Tell what happened, in chronological order.

You should submit any supporting evidence and documents to the Regional Director.

7. Indicate whether you or anyone else that you know of has raised this same matter in another forum:
   a. GRIEVANCE PROCEDURE
   b. FEDERAL MEDIATION AND CONCILIATION SERVICE
   c. FEDERAL SERVICE IMPASSES PANEL
   d. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
   e. MERIT SYSTEMS PROTECTION BOARD
   f. OFFICE OF THE SPECIAL COUNSEL
   g. NEGOTIABILITY APPEAL TO FLRA. If you have filed with FLRA, you must elect one procedure or the other. Indicate how you elect to proceed, and sign the election.
      ☐ Unfair Labor Practice Procedure (this Charge)
      or
      ☐ Negotiability Procedure

Signature
(Required only if you have filed a negotiability appeal)

Date

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

CHARGE AGAINST A LABOR ORGANIZATION

FOR FLRA USE ONLY
Case No.
Date Filed

Complete instructions are on the back of this form.

1. Name and address of charged labor organization or agent

2. Name and address of charging party (individual, labor organization, activity, or agency)

3. Charged labor organization contact information
   Name:

   Title:

   Phone: ( )

4. Charging party contact information
   Name:

   Title:

   Phone: ( )

5. Which subsection(s) of 5 U.S.C. 7116(b) and/or (c) do you believe have been violated? [See reverse] _____

6. Tell exactly WHAT the labor organization did. Start with the DATE and LOCATION, state WHO was involved, including titles.

7. Have you or anyone else raised this matter in any other procedure? ☐ No ☐ Yes If yes, where? [See reverse] _____

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THESE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT. 18 U.S.C. 1001.

Type or print your name	Your signature	Date

GPO : 1989 220-088 (m)

INSTRUCTIONS:

Use this form if you are charging that a labor organization or its agents committed an unfair labor practice under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7116. File the original and four copies with the appropriate Regional Director, Federal Labor Relations Authority. If you do not know that address, you should contact the Office of the General Counsel, Federal Labor Relations Authority (202) 382-0742. **Send a copy of this Charge to the contact named in block 3.** See 5 CFR Part 2423 for an explanation of unfair labor practice proceedings. A list (including names and addresses) of those upon whom service has been made should accompany the charge.

1. Give the full mailing address for the labor organization you are charging. Include street number, city, state, and ZIP Code. Include the name of the labor organization's local and number, its national or international affiliation, if any.

2. Give the full mailing address for the party filing the charge. If the union is affiliated with a national organization, give both the national affiliation and local designation. If an activity is part of an agency, give the name of the activity and the agency of which the activity is a part.

3. and 4. This information is essential to the investigation of your charge. Be as specific and accurate as possible. **It will assist the investigation if you include your home as well as work number.**

5. Identify which of the following subsection(s) of 5 U.S.C. 7116 has or have been violated. List all sections violated.

"(**b**) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(**1**) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(**2**) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(**3**) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(**4**) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(**5**) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

"(**6**) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(**7**) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

"(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

"(**8**) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(**c**) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

"(**1**) to meet reasonable occupational standards uniformly required for admission, or

"(**2**) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

6. It is important that the basis for the charge be both BRIEF and COMPLETE, and FACTUAL rather than opinion.

- Give dates and times of significant events as accurately as possible.
- Give specific locations when important; e.g., "The meeting was held in the supply department lunchroom, Building 36."
- Identify who was involved, by title; e.g., "Chief Steward Pat Jones" or "Lou Green, the File Room Supervisor."
- Tell what happened, in chronological order.

You should submit any supporting evidence and documents to the Regional Director.

7. Indicate whether you or anyone else have raised this same matter in another procedure:

a. GRIEVANCE PROCEDURE

b. FEDERAL MEDIATION AND CONCILIATION SERVICE

c. FEDERAL SERVICE IMPASSES PANEL

d. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

e. MERIT SYSTEMS PROTECTION BOARD

f. OFFICE OF THE SPECIAL COUNSEL

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

WASHINGTON, D. C. 20424

CHAIRMAN

August 25, 1989

TO: ALL FLRA EMPLOYEES

FROM: Jean McKee
Acting Chairman JMcK

The President has announced on August 24 his intention to nominate Tony Armendariz to be a Member of the FLRA. A copy of the White House Press Release is below. Upon formal nomination and Senate Confirmation, Mr. Armendariz would succeed Jerry Calhoun, to the term which ends July 29, 1992.

THE WHITE HOUSE

Office of the Press Secretary
(Kennebunkport, Maine)

For Immediate Release

August 24, 1989

The President today announced his intention to nominate Tony Armendariz to be a Member of the Federal Labor Relations Authority for the remainder of the term expiring July 29, 1992. He would succeed Jerry Lee Calhoun.

Since 1978, Mr. Armendariz has served as General Counsel for the University System of South Texas in Kingsville, Texas. Prior to this, he was Assistant Attorney General for the State of Texas in Austin, Texas, 1977-1978; District Counsel for the United States Equal Employment Opportunity Commission, 1975-1976; and Assistant Attorney General for the State of Texas, 1973-1975. He served as Executive Vice-President for Homecare de Venezuela, S.A. in Caracas, Venezuela, 1972-1973; and was involved in marketing and distributor training for Homecare de Mexico, S.A., a privately-owned cosmetic business in Mexico City, 1969-1972. He was President for Venezuelan Operations of the Tupperware Division for Rexall Venezuela, CA in Caracas, Venezuela, 1965-1969; and an Associate Attorney in the Law Office of Jesse Guy Benson, 1960-1965.

Mr. Armendariz was graduated from Trinity University (B.S., 1952); St. Mary's University School of Law (J.D., 1956); and Southern Methodist University, School of Law (MCL, 1960). He is married, has three children and currently resides in Corpus Christi, Texas.

* U.S. GOVERNMENT PRINTING OFFICE:1989-241-154:00009

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 29, 1989

The President today announced his intention to reappoint Jean McKee as a Member of the Federal Labor Relations Authority for a term of five years expiring July 1, 1994. Upon confirmation, she is to be designated Chairman.

Since 1988, Ms. McKee has served as Acting Chairman of the Federal Labor Relations Authority; and has served as a Member of the Authority, since 1986. Prior to this, she was Executive Director of the Federal Mediation and Conciliation Service, 1983-1986. From 1980-1983, Ms. McKee was Director of Government Relations for the General Mills Restaurant Group. From 1979-1980, she was a Public Affairs Consultant in New York and Connecticut. In 1979, she was appointed to a 3-year term on the Advisory Commission on Public Diplomacy; and Deputy Administrator then Administrator of the American Revolution Bicentennial Administration in Washington, D.C., 1976-1977. Prior to this, she served in several capacities for New York Senator Jacob K. Javits, 1967-1975.

Ms. McKee was graduated from Vassar College with a Political Science degree. She resides in Washington, D.C.

# # #

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 29, 1989

The President today announced that Kathleen Day Koch will continue to serve as General Counsel of the Federal Labor Relations Authority for a term of five years. She would succeed Dennis M. Devaney.

Since 1988, Ms. Koch has served as General Counsel of the Federal Labor Relations Authority. Prior to this, she was Associate Counsel to the President at The White House, 1987-1988. She was Senior Attorney at the United States Department of Commerce, 1984-1987. She was an Attorney with the United States Merit Systems Protection Board, 1979-1984; and an Attorney at the Department of Housing and Urban Development, 1977-1979.

Ms. Koch was graduated from the University of Missouri-St. Louis (B.S., 1971) and the University of Chicago Law School (J.D., 1977). Ms. Koch, a native of St. Louis, resides with her three children in Annandale, Virginia.

# # #

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release July 27, 1989

The President today announced his intention to nominate Pamela Talkin to be a Member of the Federal Labor Relations Authority for a term of five years expiring July 1, 1990. She would succeed Henry Bowen Frazier III.

Since 1986, Ms. Talkin has been Chief of Staff for the United States Equal Employment Opportunity Commission in Washington, D.C. Prior to this, she was Assistant Regional Director for the National Labor Relations Board, Region 20 in San Francisco, California, 1984-1986. She was Special Assistant to the Commissioner of the United States Equal Employment Opportunity Commission, 1984-1985; and Supervisory Compliance Officer for the National Labor Relations Board, Region 20, 1981-1983; and National President for the National Labor Relations Board Union, 1977-1981; and Labor-Management Relations Examiner for the National Labor Relations Board, Region 20, 1973-1981.

Ms. Talkin was graduated from City of New York, Brooklyn College (B.A., 1968; M.A., 1971). She currently resides in Washington, D.C.

# # #

*U.S. GOVERNMENT PRINTING OFFICE:1989-241-154:00008

Federal Service Impasses Panel

500 C Street, SW. Washington, D.C. 20424

Information ~~Release~~ Announcement January 6, 1989

BREWER, ROBFOGEL, AND VAN de WATER REAPPOINTED TO PANEL

On January 6, 1989, Roy M. Brewer was sworn in as Chairman and Member and Susan S. Robfogel and John R. Van de Water were sworn in as Members of the Federal Service Impasses Panel. Their reappointments by President Reagan extend their previous terms, due to expire on January 10, 1989, for another 5 years. The seven-person panel, an entity within the Federal Labor Relations Authority, provides assistance to Federal agencies and unions in resolving collective bargaining impasses.

Mr. Brewer, originally appointed as a Member of the Panel in September 1983, has been active in the labor movement for over 50 years. Since 1977, he has been a consultant to Local 695, Sound Technicians, Cinetechnicians, and Television Engineers, AFL-CIO. He became interested in labor when he joined the projectionists union in 1927. In 1933, he was elected president of the Nebraska State Federation of Labor, a position which he held for 8 years. He left the federation during World War II to become Chief of the Plant and Communities Facilities Services, a division of the Office of Labor Production of the War Production Board. In 1945, he was appointed international representative of the projectionists union and was assigned to Hollywood where he served 8 years as the principal spokesman for the technicians of the motion picture industry. There he became a friend and colleague of President Reagan who was then the president of the Screen Actors Guild. He resigned from the Union in 1953 to work with Allied Artists Pictures Corporation in New York where he served 11 years as assistant to President Steve Brody, and returned to Hollywood in 1967 to work with Technicolor as Director of Industrial Relations. In 1972, he rejoined the staff of the union where he remained until he became a consultant to Local 695 in 1977, a position which he still holds today.

Mr. Brewer also served on the Wage Stabilization Board, for the southwest region, during the Korean war. Mr. Brewer, who is married and has two children, resides in Tarzana, California.

Mrs. Robfogel, first appointed to the Panel in 1983, is a partner in the law firm of Nixon, Hargrave, Devans & Doyle, Rochester, New York, a 280-lawyer firm with 5 offices. She chairs the firm's 30-member Health Services Practice Group. She is a member of the Board of Directors of Alfred University and a trustee of the Rochester Area Chamber of Commerce. Since 1984, she has been a member of the New York State Data Protection Review Board and is now its chairman. She is a member of the Monroe County, New York State, District of Columbia, and American Bar Associations; and a fellow of the American Bar Foundation. She is a member of the ABA's Labor Relations Law Section and serves on the Committee on Development of Law Under the National Labor Relations Act and the management subcommittee responsible for preparing the annual supplement to the text entitled, Developments of the Law Under the National Labor Relations Act. She is a member of the ABA's Municipal Law Section and serves on the committee on Public Health Care and the Forum Committee on Health Law. She is immediate past chairman of the NYSBA's committee on Health Law and a member of the Labor Law Section. For several years she served on the State Bar Ethics Committee. She is a member of the House of Delegates of the State Bar Association. She is a former trustee of the Monroe County Bar Association and a former member of its Executive Committee. She is a member of the National Panel of Arbitrators of the American Arbitration Association, the American Judicature Society, the Management Attorneys Conference, the National Association of College and University Attorneys, the National Health Lawyers Association, the American Society of Hospital Attorneys and the Hospital Financial Management Association.

Mr. Van de Water, a resident of Southern California, was first designated Member of the Federal Service Impasses Panel, to fill out the term of the late Member Robert G. Howlett, in September 1988. He has arbitrated numerous labor-management disputes, and is author of a wide variety of articles on labor law, industrial relations, key government issues, and professional management. He was formerly Counselor to the U.S. Secretary of Labor, 1985-87; Special Assistant to the U.S. Secretary of Labor, 1982-83; and Chairman of the National Labor Relations Board, 1981-82. He also served on the faculty of the Graduate School of Management at the University of California, Los Angeles, as Director of Executive Programs, and was an Adjunct Professor of Law and Management at the Graduate School of Business Administration at the University of Southern California. He created and served as first Director of Continuing Education of the Bar for the University of California and

the State Bar of California -- the first such program now duplicated in almost all American states. He has headed his own law firm and consultant corporation for the evaluation of improvement in managerial effectiveness for many years. He holds an honorary life membership with the American Society for Personnel Administration, the Personnel Industrial Relations Association of Los Angeles, and the Personnel Management Association of San Diego.

Other members of the Federal Service Impasses Panel, all of whom serve on a part-time basis, are Thomas A. Farr of Raleigh, North Carolina; N. Victor Goodman, of Columbus, Ohio; Daniel H. Kruger, of Lansing, Michigan; and Jean T. McKelvey of Rochester, New York.

For further information,
telephone (202) 382-0981

☆U.S. GOVERNMENT PRINTING OFFICE:1989-241-154:9-0001

Federal Labor Relations Authority

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT December 28, 1988

Kathleen Koch Appointed General Counsel

On December 22, 1988, President Reagan recess appointed Kathleen D. Koch to be the General Counsel of the Federal Labor Relations Authority. The President also announced his intention to nominate Ms. Koch for the position of General Counsel when the Senate convenes on January 3, 1989.

The General Counsel's term of office is 5 years. Ms. Koch succeeds Dennis M. Devaney, who resigned as General Counsel on November 21, 1988, to become a Member of the National Labor Relations Board.

Since 1987, Ms. Koch has been an Associate Counsel to the President. From 1984 to 1987, she was a Senior Attorney in the Department of Commerce. For 5 years prior to that, Ms. Koch was an Attorney for the Merit Systems Protection Board. She was an Attorney in the Department of Housing and Urban Development from 1977 to 1979.

Ms. Koch received her law degree from the University of Chicago Law School and her undergraduate degree from the University of Missouri-St. Louis. She is a native of St. Louis. Ms. Koch resides with her three children in Annandale, Virginia.

Further information may be obtained from the Authority at (202) 382-0900.

☆U.S.GOVERNMENT PRINTING OFFICE:1989-241-154:9-0001

Federal Service Impasses Panel

500 C Street, SW. Washington, D.C. 20424

Information Release September 14, 1988

John R. Van de Water Appointed to Panel

John R. Van de Water was designated Member of the Federal Service Impasses Panel, to fill out the term of the late Member Robert G. Howlett, the White House announced on September 8, 1988. He was sworn in by Panel Chairman Roy M. Brewer on September 9, 1988, for the term expiring on January 10, 1989.

The Panel, an entity within the Federal Labor Relations Authority, assists Federal agencies and unions composed of Federal employees in resolving negotiation impasses, imposing the terms of an agreement where necessary to bring finality.

Mr. Van de Water has arbitrated numerous labor-management disputes and is the author of a wide variety of articles on labor law, industrial relations, key Government issues, and professional management. He was formerly Counselor to the U.S. Secretary of Labor, 1985-1987; and Chairman of the National Labor Relations Board, 1981-1982. He also served on the faculty of the Graduate School of Management at the University of California, Los Angeles, as Director of Executive Programs, and was an Adjunct Professor of Law and Management at the Graduate School of Business Administration at the University of Southern California.

He created, and was the first director of, Continuing Education of the Bar for the California State Bar and the University of California. This later served as the model for updating the education of lawyers in over 45 states.

He has headed his own law firm and consulting corporation for the evaluation of and improvement in managerial effectiveness for many years. He holds an Honorary Life Membership with the American Society for Personnel Administration, the Personnel and Industrial Relations Association of Los Angeles, and the Personnel Management Association of San Diego.

Mr. Van de Water, born March 26, 1917, in Long Beach, California, was graduated from the University of Chicago (B.A., 1939; J.D., 1941). He served in the United States Army, 1945-1946. He has six children and resides in Southern California.

Other members of the Federal Service Impasses Panel are Chairman Roy M. Brewer of Tarzana, California; Jean T. McKelvey of Rochester, New York; N. Victor Goodman of Columbus, Ohio; Daniel H. Kruger of Lansing, Michigan; Susan S. Robfogel of Rochester, New York; and Thomas A. Farr of Raleigh, North Carolina.

For further information,

telephone (202) 382-0981

*U.S. GOVERNMENT PRINTING OFFICE: 1988 201-738:80017

Federal Labor Relations Authority

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT June 21, 1988

The Federal Labor Relations Authority announces the appointment of a new Administrative Law Judge, Mr. Jesse Etelson.

Judge Etelson is a native of Rockland County, New York. He was born in Spring Valley and graduated from Spring Valley High School in 1951. From there he went on to Colgate University and Yale Law School. He returned to Rockland County and began his legal career with Etelson & Fassberg, the firm of his father, the late Louis Etelson. Judge Etelson also set up his own practice in New City, until 1965, when he married the former Jacqueline Glaser of Scarsdale and took a legal position with the Solicitor of the U.S. Department of Labor in Washington, D.C. He moved to the National Labor Relations Board in 1967 and served there for over 20 years.

He returned to the Department of Labor temporarily in 1986 to join a task force investigating legal obstacles to labor-management cooperation, a subject on which he has lectured to attorneys and labor relations professionals. He has also published several articles on labor relations law and related subjects.

The Etelsons live in Rockville, Maryland.

☆U.S. GOVERNMENT PRINTING OFFICE:1988-201-738:80012

IRX

Federal Labor Relations Authority

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCEMENT | May 20, 1988

During the first half of May, the Federal Labor Relations Authority issued several decisions of more than routine interest. Chief among them is Federal Employees Metal Trades, Union Council of Charleston and Department of the Navy, Charleston Naval Shipyard, Charleston, South Carolina, 32 FLRA No. 15 (May 17, 1988), where the Authority found three proposals involving the Agency's implementation of a "profit sharing" plan to be negotiable under the Federal Service Labor-Management Relations Statute (the Statute).

The Shipyard is an industrially-funded activity, whose budget consists primarily of income from charges to its military "customers." To enhance efficiency in overhauling Navy submarines, the Secretary of the Navy ordered competition between Government and commercial shipyards. The Shipyard was awarded the contracts, and as an incentive to complete the projects at low cost, a profit sharing plan was instituted. Under this plan, the Agency intended that a percentage of the realized profits be returned to employees in the form of incentive payments. The Union sought to negotiate a specific percentage share for bargaining unit employees.

In finding the proposal to be negotiable, the Authority concluded that:

- the doctrine of sovereign immunity does not bar its review of the case because the fact that resolution of a negotiability dispute may potentially require expenditure of funds does not remove the dispute from the scope of the Statute.

- the proposals pertain to bargaining unit employees and do not so directly affect the vital interests of nonunit employees as to render them nonnegotiable.

- the profit sharing plan was instituted under provisions of law applicable to incentive award programs, and based on previous Authority and Court precedent, the amounts of such incentive awards are, within certain boundaries, negotiable.

- the proposals did not interfere with the Agency's rights to determine its budget, assign work and direct employees, or determine the methods and means of performing work.

The Authority also found negotiable a proposal that retirees be permitted to share in the profit sharing on a pro rata basis if they participated in the project before retiring. The Agency was ordered to bargain on all three proposals.

Other recent holdings of note are the following:

- A proposal that the Union be provided with copies of unsanitized decision letters concerning bargaining unit employees against whom disciplinary or adverse actions were taken is negotiable. National Treasury Employees Union, Chapter 237 and U.S. Department of Agriculture, Food and Nutrition Service Midwest Region, 32 FLRA No. 8 (May 11, 1988).

- The Authority has subject matter jurisdiction over exceptions to arbitration awards involving adverse actions against excepted service employees who do not enjoy a right of appeal to the Merit Systems Protection Board. Having so concluded, the Authority affirmed an arbitrator's award finding that some employees were furloughed without proper advance notice. Department of Health and Human Services, Social Security Administration and American Federation of Government Employees, AFL-CIO, 32 FLRA No. 10 (May 11, 1988).

- The Authority reanalyzed and reaffirmed the standards it will use in determining whether an award of attorney fees to a successful Charging Party Union is in "the interests of justice" under the Back Pay Act. United States Department of Justice, Bureau of Prisons, Washington, D.C. and Bureau of Prisons, Federal Correctional Institution, Ray Brook, New York, 32 FLRA No. 3 (May 9, 1988).

Copies of any of the decisions may be obtained from the Authority's Office of Case Control at (202) 382-0764.

☆U.S.GOVERNMENT PRINTING OFFICE:1988-201-739:9-0010

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCMENT | April 19, 1988

The Federal Labor Relations Authority has clarified the power of the Federal Service Impasses Panel (the Panel) to resolve a negotiation impasse by directing the parties to use binding interest arbitration. The case is entitled United States Department of Justice, Immigration and Naturalization Service and American Federation of Government Employees, National Border Patrol Council, 31 FLRA No. 94 (April 13, 1988).

When the parties were unable to reach full agreement in their negotiations for a collective bargaining agreement, the Union sought assistance from the Panel. The Panel first recommended, and then later directed, the parties to use binding interest arbitration. Unable to resolve the matters at impasse through the use of mediation, the Arbitrator imposed provisions on the parties for sixteen (16) articles, seven of which were claimed by one party or the other to be deficient. Timely exceptions to the award were filed with the Authority by both parties.

A fundamental question in this case was whether the Panel had exceeded its authority under section 7119 of the Federal Service Labor-Management Relations Statute (the Statute) when it directed the parties to use binding interest arbitration to resolve their impasse. After a review of the wording of the Statute, the legislative history of section 7119, and the practice under Executive Order 11491, the Authority concluded that "the Panel (may) take whatever action it deems necessary to resolve an impasse which has been referred to it for its consideration." The Authority noted that, ". . . the success of the Panel in providing for the resolution of the many impasses which are referred to it depends on the variety of techniques it may apply to an impasse" and that the use of interest arbitration "effectuates the purposes and policies of the Statute of facilitating the settlement of disputes." Although the Statute requires parties to an impasse to obtain Panel approval before voluntarily engaging in binding interest arbitration, once the dispute is submitted to the Panel it may use whatever procedures (including binding interest arbitration) it deems appropriate, including direct Panel assistance to resolve the impasse.

Reaffirming that unions or agencies may assert the nonnegotiability of provisions imposed by an interest arbitrator, the Authority turned to the specific provisions imposed by the Arbitrator. It modified the award as to certain disputed provisions, found the award not to be deficient as to others, and ordered the parties to return to the bargaining table concerning one article over which the Arbitrator had exceeded his authority under existing Authority negotiability case law.

Copies of the decision may be obtained from the Authority's Office of Case Control at (202) 382-0764.

★U.S. GOVERNMENT PRINTING OFFICE:1988- 201-730:8-0008

Federal Labor Relations Authority

Washington, D.C. 20424

IMMEDIATE RELEASE INFORMATION ANNOUNCEMENT March 28, 1988

The President today announced his intention to nominate Dennis M. Devaney to be General Counsel of the Federal Labor Relations Authority for a term of five years. He would succeed John Carl Miller. Mr. Devaney has been serving as Acting General Counsel since March 17, 1988.

Since 1982, Mr. Devaney has been a Board Member of the U.S. Merit Systems Protection Board in Washington, D.C. Prior to this, he was an Attorney with Tighe, Curhan, Piliero & Case, 1979-1982. Mr. Devaney was a Legislative Representative with Philip Morris Incorporated, 1979; Counsel for Food Marketing Institute, 1977-1979; and Assistant General Counsel for the U.S. Brewers Association, 1975-1977. From 1972-1975, he was a law clerk with NASA Goddard Space Flight Center in Greenbelt, Maryland.

Mr. Devaney graduated from University of Maryland (B.A., 1968; M.A., 1970) and Georgetown University Law Center (J.D., 1975). He was born February 25, 1946 in Cheverly, Maryland. He served in the United States Navy, 1970-1972. Mr. Devaney is married, has two children and resides in Columbia, Maryland.

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*U.S.GOVERNMENT PRINTING OFFICE:1988-201-730:8-0007

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT MARCH 15, 1988

Chairman Jerry L. Calhoun has announced the reappointment of two members of the Foreign Service Impasse Disputes Panel. Established under Chapter 10 of the Foreign Service Act of 1980 and effective February 15, 1981, the Panel assists the parties in resolving negotiation impasses arising in the course of collective bargaining. The five Panel Members, one of which serves as Chairman, are selected from among individuals knowledgeable in labor-management relations or the conduct of foreign affairs, to include two members of the Foreign Service, one member employed by the Department of Labor, one member of the Federal Service Impasses Panel (FSIP), and one public member who does not hold any other office or position in the Government.

Margery F. Gootnick who serves as Chairman of the Panel has been reappointed as the public member for a three-year term expiring February 24, 1991. She will continue to serve as Chairman. Mrs. Gootnick, a labor arbitrator-mediator, has extensive experience in labor-management relations in the private sector and Federal and State public sectors. She is arbitrator for the United Airlines-IAMAW System Board of Adjustment, the American Airlines Association of Professional Flight Attendants, Tennessee Valley Authority-Salary Policy Employees Panel, the State of New York and Police Benevolent Association of New York State Police,, and Orleans County Sheriff's Department and Security and Law Enforcement Employees Council 82. She has been appointed to several panels concerning union matters, including the National Treasury Employees Union and Internal Revenue Service (disciplinary panel). She is a member of the National Academy of Arbitrators, the American Bar Association, the New York State Bar Association, the Federal Bar Association, the Society of Professionals in Dispute Resolution, and the Society of Federal Labor Relations Professionals. She holds a B.A. degree from Harvard College and a J.D. degree from Cornell Law School. She and her family reside in Rochester, New York.

Robert G. Howlett has been reappointed as the representative of the Federal Service Impasses Panel (FSIP) for a three-year term to expire on February 24, 1991. He was appointed as the FSIP Member on the Panel in February 1982 after having previously acted as its Chairman and public member. A prominent labor arbitrator, Mr. Howlett served as Chairman of the FSIP from 1976 to 1978 and from 1982 to 1983. He was a member and Chairman of the Michigan Employment Relations Commission from 1963 to 1976. He also served with the National War Labor Board. Mr. Howlett is Counsel to the law firm of Varnum, Riddering, Schmidt, and Howlett in Grand Rapids, Michigan. He is also a member of the National Academy of Arbitrators, a director of the American Arbitration Association, and a member of the Michigan, District of Columbia, Illinois, New York and Tennessee Bars. A past president of the Association of Labor Relations Agencies and the Society of Professionals in Dispute Resolution, Mr. Howlett is currently a member of these organizations as well as the Industrial Relations Research Association. Mr. Howlett's publications on the subject of collective bargaining are numerous. He was born in Michigan where he has resided for most of his life and received both his B.S. and J.D. degrees from Northwestern University.

* U.S. GOVERNMENT PRINTING OFFICE:1989-201-738:80006

IRA

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT February 24, 1988

The Federal Labor Relations Authority has clarified the role of an arbitrator in considering duty to bargain issues raised by the parties during an interest arbitration proceeding. The case is entitled Commander, Carswell Air Force Base, Texas and American Federation of Government Employees, Local 1364, 31 FLRA No. 37 (February 23, 1988).

The Authority holds that interest arbitrators are not authorized to make negotiability rulings to resolve questions concerning the duty to bargain under the Federal Service Labor-Management Relations Statute (the Statute). However, arbitrators may apply existing Authority case law to resolve an impasse raising a duty to bargain issue. In such situations arbitrators, with the assistance of the parties, may properly base an interest arbitration award on existing precedent, and the Authority will, if exceptions are filed, review the award on the merits. In reviewing such an award, the Authority states that it will consider the following questions:

1. Was the proposal raising the duty to bargain issue substantively identical to one which was previously addressed by the Authority?

2. Were the parties' contentions before the arbitrator similar to ones addressed by the Authority in previous cases?

3. Did the arbitrator cite and discuss applicable Authority case law and other relevant precedent?

4. Are there any other considerations which lead to a conclusion that the arbitrator correctly or incorrectly considered the duty to bargain issue?

The Authority also addresses the authority of the Federal Service Impasses Panel in this area and finds that "the Panel and interest arbitrators have the same authority under the Statute to consider duty to bargain issues which arise in a negotiation impasse." The Authority notes that the

courts had previously held that the resolution of duty to bargain issues is a matter reserved to the Authority. It concludes that:

> There is now a substantial body of Authority precedent resolving numerous duty to bargain issues. That precedent is intended to provide guidance not only to the parties to the bargaining process, but also to third parties like the Panel and interest arbitrators whose function is to resolve negotiation impasses. In our view, the purposes of the Statute are best furthered by encouraging third party consideration and application of this precedent so as to assist in the resolution of negotiation impasses which raise substantively identical duty to bargain issues to those already decided by the Authority. No useful purpose is served by requiring the Panel or interest arbitrators to refrain from applying precedent merely in order to permit the Authority to address a substantively identical proposal which varies slightly in wording from a proposal previously addressed by the Authority.

Although most allegations of the nonnegotiability of proposed contract language are raised by an agency, in the instant case the Union raised the issue, and the Authority finds no reason to treat such a claim in any different manner.

Copies of the decision may be obtained from the Authority's Office of Case Control at (202) 382-0764.

* U.S. GOVERNMENT PRINTING OFFICE: 1988-201-736:80004

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCEMENT | February 23, 1988

The Federal Labor Relations Authority wishes to share with you the enclosed news release from the Department of Labor, Bureau of Labor-Management Relations and Cooperative Programs.

Authority staff was privileged to assist in the editing of the portion of the second interim report describing cooperative initiatives in the Federal sector labor-management relations program (pp. 1-38). We believe it will be of interest to practitioners in the personnel and labor relations community.

Single free copies of the report are available by writing BLMR 119, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N5419, Washington, D.C. 20210. A self-addressed mailing label must accompany each request.

Attachment

News

United States Department of Labor

Office of Information

Washington, D.C. 20210

BUREAU OF LABOR-MANAGEMENT RELATIONS
AND COOPERATIVE PROGRAMS

CONTACT: Gordon Berg
OFFICE: (202)523-6098

USDL: 88-78

FOR RELEASE: Immediate
Thursday, February 18, 1988

LABOR DEPARTMENT ISSUES SECOND INTERIM REPORT ON "LAWS PROJECT"

Good examples of labor-management cooperation can be found in the Federal government, but the full potential for cooperation has not yet been realized, according to a report issued by the U.S. Department of Labor.

The report examines the Federal labor relations system and analyzes the impact of the Civil Service Reform Act (CSRA) on cooperative initiatives among Federal personnel.

The report is part of a project, launched in June 1986, by the department's Bureau of Labor-Management Relations and Cooperative Programs, entitled "U.S. Labor Law and the Future of Labor-Management Cooperation." The project examines how labor laws and administrative procedures might impede cooperative efforts between managers and workers and thus hinder the growth of U.S. productivity and competitiveness.

Specifically, the second interim report addresses the relationship between collective bargaining rights in the Federal service and the development of cooperative relationships existing within bargaining frameworks established by CSRA. Gainsharing programs in the Federal service and the strengths and pitfalls of cooperative efforts outside the collective bargaining framework are also examined.

Much of the information in the report was development through interviews with more than 70 representatives of the Federal labor-management community including union representatives, labor lawyers, managers and supervisors, arbitrators and academics.

The report also analyzes the relationship of labor-management cooperation to the duty of fair representation under the National Labor Relations Act. The report gives an overview of the duty of fair representation, including recent developments in court and administrative decisions, and analyzes how the union's obligation to represent employees' interests fairly is impacted by cooperative labor-management practices. The report concludes that careful structuring of cooperative mechanisms and better communication of their goals may help parties to minimize problems arising under this area of the law.

The report also contains updates and commentary from readers on issues raised in the original report and the first interim report. Areas for future exploration, including the impact of the Railway Labor Act on cooperation and potential legal impediments to cooperation in State and local government, are also mentioned.

As a working document, the report encourages comments on all issues discussed in it. When the project is completed, the Bureau will report on its findings to the Secretary of Labor and publish a final summary report.

To comment on issues raised in the report, please contact Joy Reynolds, Bureau of Labor-Management Relations and Cooperative Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N5402, Washington, D.C. 20210; telephone (202) 523-6487.

Single free copies of the report are available by writing BLMR 119, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N5419, Washington, D.C. 20210. A self-addressed mailing label must accompany each request.

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*U.S.GOVERNMENT PRINTING OFFICE:1988-201-736:80004

Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

IMMEDIATE RELEASE | INFORMATION ANNOUNCEMENT | Feb. 16, 1988

John C. Miller, General Counsel of the Federal Labor Relations Authority, announces the selection of Linda J. Norwood as Regional Attorney for the Atlanta Regional Office.

Prior to her selection, Ms. Norwood served as a Senior Field Attorney in the Atlanta Office from 1979 to 1985. Before coming to the Authority, she served as the Staff Attorney for the Tennessee Supreme Court, Nashville, Tennessee. From 1985 to 1987, Ms. Norwood was a partner in the Knoxville, Tennessee law firm of Masters, Woods and Norwood, specializing in litigation.

Ms. Norwood earned a B.A. degree from David Lipscomb College, Nashville, Tennessee, an M.Ed. degree from Middle Tennessee State University, Murfreesboro, Tennessee, and a J.D. degree from the University of Tennessee Law School, Knoxville, Tennessee.

* U.S. GOVERNMENT PRINTING OFFICE: 1988-201-736:80004

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT February 24, 1988

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The Authority holds that interest arbitrators are not authorized to make negotiability rulings to resolve questions concerning the duty to bargain under the Federal Service Labor-Management Relations Statute (the Statute). However, arbitrators may apply existing Authority case law to resolve an impasse raising a duty to bargain issue. In such situations arbitrators, with the assistance of the parties, may properly base an interest arbitration award on existing precedent, and the Authority will, if exceptions are filed, review the award on the merits. In reviewing such an award, the Authority states that it will consider the following questions:

1. Was the proposal raising the duty to bargain issue substantively identical to one which was previously addressed by the Authority?

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The Authority also addresses the authority of the Federal Service Impasses Panel in this area and finds that "the Panel and interest arbitrators have the same authority under the Statute to consider duty to bargain issues which arise in a negotiation impasse." The Authority notes that the

courts had previously held that the resolution of duty to bargain issues is a matter reserved to the Authority. It concludes that:

> There is now a substantial body of Authority precedent resolving numerous duty to bargain issues. That precedent is intended to provide guidance not only to the parties to the bargaining process, but also to third parties like the Panel and interest arbitrators whose function is to resolve negotiation impasses. In our view, the purposes of the Statute are best furthered by encouraging third party consideration and application of this precedent so as to assist in the resolution of negotiation impasses which raise substantively identical duty to bargain issues to those already decided by the Authority. No useful purpose is served by requiring the Panel or interest arbitrators to refrain from applying precedent merely in order to permit the Authority to address a substantively identical proposal which varies slightly in wording from a proposal previously addressed by the Authority.

Although most allegations of the nonnegotiability of proposed contract language are raised by an agency, in the instant case the Union raised the issue, and the Authority finds no reason to treat such a claim in any different manner.

Copies of the decision may be obtained from the Authority's Office of Case Control at (202) 382-0764.

* U.S. GOVERNMENT PRINTING OFFICE: 1988-201-736:80004

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Release INFORMATION ANNOUNCEMENT January 29, 1988

The Federal Labor Relations Authority has reanalyzed the remedial powers of Arbitrators in resolving disputes concerning performance appraisal matters. The Authority holds that where certain conditions are met, an Arbitrator may direct management "to grant employee(s) the performance rating(s) they would have received if they had been appraised properly." The case is entitled Social Security Administration and American Federation of Government Employees, AFL-CIO, 30 FLRA No. 127 (January 28, 1988).

This case represents the culmination of a comprehensive review of previous Authority case law involving Federal sector labor arbitration of performance appraisal related matters. First, the Authority reemphasizes its holdings that proposals offered by Unions in collective bargaining are outside the duty to bargain, and arbitration awards to which exceptions are filed will not be sustained, if the proposals or awards "alter or determine the content of established performance standards." The Authority further reemphasized its recent decision in Newark Air Force Station and American Federation of Government Employees, Local 2221, 30 FLRA No. 76 (1987) which held that ". . . a grievance alleging that management violated applicable law or regulation when it established a grievant's performance standards and elements--whether or not the grievant has been evaluated under the standards and elements--is grievable and arbitrable under the Statute."

Against this background, the Authority concludes that an arbitrator's award requiring an agency to change a grievant's performance rating does not necessarily violate management's rights under section 7106(a)(2)(A) and (B) of the Federal Service Labor-Management Relations Statute (the Statute) to direct employees and assign work.

Disputes relating to the application of established elements and standards to an individual employee are grievable and arbitrable. Arbitrators may sustain such a grievance if they determine that management has not applied the established elements and standards or that management has applied the

established elements and standards in violation of law, regulation, or a properly negotiated provision of the parties' collective bargaining agreement. When such a finding is made, the Authority rules that:

> [T]he arbitrator may cancel the performance appraisal or rating. When the arbitrator is able to determine on the basis of the record presented what the rating of the grievant's work product or performance would have been under the established elements and standards, if they had been applied, or if the violation of law, regulation, or the collective bargaining agreement had not occurred, the arbitrator may direct management to grant the grievant that rating. If the record does not enable the Arbitrator to determine what the qrievant's rating would have been, the arbitrator should direct that the grievant's work product or performance be reevaluated by management as appropriate.

The Authority concludes that this approach best reduces any conflict between management's reserved rights under the Statute and the ". . . Congressionally mandated grievance and arbitration procedures." This approach is fully consistent with the powers routinely exercised by arbitrators in resolving other grievances including those that involve the exercise of other management rights (e.g., whether disciplinary action was warranted and, if so, whether the penalty assessed was appropriate).

Applying these principles to the facts of this case, the Authority concludes that the arbitrator impermissibly altered the content of the established performance standards in issuing his award. Accordingly, the award is modified to provide for reevaluation of the grievant.

Copies of the decision may be obtained from the Authority's Office of Case Control at (202) 382-0764.

*U.S. G.P.O. 1988-201-738:80002

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT January 28, 1988

The Federal Labor Relations Authority has ruled that Union proposals seeking to preclude random urinalysis testing of certain Federal employees are not a proper subject of negotiations under the Federal Service Labor-Management Relations Statute (the Statute). The Authority also ruled that other proposals concerning drug testing are negotiable either because they do not interfere with management's rights under the Statute or because they constitute "appropriate arrangements" for employees adversely affected by the exercise of those rights under section 7106(b)(3) of the Statute.

The case is entitled National Federation of Federal Employees, Local 15 and Department of the Army, U.S. Army Armament, Munitions and Chemical Command, Rock Island, Illinois, 30 FLRA No. 115 (January 27, 1988).

In February 1986, the Department of the Army (the Agency) revised its regulations on "Alcohol and Drug Abuse Prevention and Control" to provide for unannounced random urinalysis testing of employees holding positions in job categories which were deemed "critical." Unions representing certain of these employees sought to enter into bargaining concerning the changes in the regulations. When the Agency declared the Unions' proposals nonnegotiable, a series of appeals to the Authority resulted. The U.S. Army Armament, Munitions and Chemical Command case is the first of these appeals to be decided by the Authority.

Before turning to the negotiability of the proposals at issue in the case, the Authority noted numerous events which had occurred subsequent to the filing of the appeals. On September 15, 1986, President Reagan issued Executive Order 12564, entitled "Drug Free Federal Workplace." On November 28, 1986, the Office of Personnel Management issued Federal Personnel Manual (FPM) Letter 792-16, "Establishing a Drug-Free Federal Workplace." On February 13, 1987, the Department of Health and Human Services (HHS) issued "Scientific and Technical Guidelines for Drug Testing Programs." The Supplemental Appropriations Act for 1987, Pub. L. No. 100-71, 101 Stat. 391, 468 (July 11, 1987) required, among other things, notice and publication of the HHS Guidelines. Although proposed rules were published on August 14, 1987, no final regulations have yet been published by HHS.

The Authority also discussed the extensive Federal court litigation involving the Department of the Army and other drug

(more)

testing programs. The Authority noted that it lacked jurisdiction to decide questions concerning the constitutionality of drug testing programs. Thus, for the purposes of its decision the Authority assumed the validity of Executive Order 12564 and any applicable Government-wide regulations implementing drug testing programs. It stressed that it was only resolving duty to bargain questions raised in connection with the specific proposals contained in the appeals.

The first proposal provided that "employees in sensitive positions . . . may be directed to submit to urinalysis testing to detect presence of drugs only when there is probable cause to suspect the employees have engaged in illegal drug abuse." The Authority determined that the proposal, which would preclude the use of random testing, was not negotiable because it conflicted with the Agency's right to determine its internal security practices under section 7106(a)(1) of the Statute by substantively restricting the circumstances in which employees will be subject to the drug testing program. The Authority stated:

> We will not review the Agency's determination that the establishment of a drug testing program involving random tests for the positions which it has identified as sensitive positions is necessary to protect the security of its installations. [T]he purpose . . . is to prevent the increased risk to security which the Agency has identified as resulting from drug use by employees in those sensitive positions. That is a judgement which is committed to management under section 7106(a)(1) of the Statute. Where a link has been established between an agency's action--in this case random drug testing--and its expressed security concerns, we will not review the merits of that action. We find that such a linkage is present in this case.

The Authority further concluded that the proposal did not constitute an "appropriate arrangement" for employees adversely affected by the exercise of a management right. Rather than simply ameliorate the adverse consequences of the imposition of random drug testing, the proposal "completely negates the Agency's decision" and "would reverse the substantive effect of that decision."

The Authority next turned to the question of the negotiability of a wide range of proposals concerning "Testing Methods and Procedures." The Authority found that:

(more)

3,F)

• a proposal requiring the use of the "most reliable" procedures or equipment is nonnegotiable because it directly and excessively interferes with management's rights;

• a proposal that requires the use of qualified personnel to conduct such tests interferes with the right to assign work, but does not do so to an excessive manner, and thus is negotiable as an appropriate arrangement.

• proposals concerning "field testing" which would ignore initial tests and deal with confirmation of only a second or additional samples are nonnegotiable because they are inconsistent with the Executive Order.

• proposals which would permit an employee to retain a portion of the sample and/or permit the employee to have a test performed by an independent laboratory are negotiable because they do not interfere with protected management's rights.

Finally, the Authority considered a proposal involving "Observation of the Sampling Process." The Army's regulations had originally provided for direct observation of an employee providing a sample. That procedure had subsequently been modified to bring it into conformance with the Executive Order which provides for privacy except when an agency has "reason to believe" that a particular employee will alter or substitute for the sample. The Union's proposal limited direct observation to situations where the Agency has "probable cause" to believe that the employee will alter the test. Concluding that "reason to believe" and "probable cause" have different legal meanings, the Authority found this proposal nonnegotiable because it is inconsistent with the Executive Order.

The Authority also issued two other drug testing cases dealing only with proposals requiring probable cause or deleting random testing. Both were found nonnegotiable based on the reasoning concerning the first proposal in the lead case. These cases are entitled National Association of Government Employees, Local R14-9 and U.S. Army, Dugway Proving Ground, Dugway, Utah, 30 FLRA No. 116 (January 27, 1988), and International Association of Machinists and Aerospace Workers, Lodge No. 282 and Department of the Army Headquarters, I Corps Fort Lewis, Washington, 30 FLRA No. 117 (January 27, 1988).

Copies of the decisions in these cases may be obtained from the Authority's Office of Case Control at (202) 382-0764. Requests for other further information should be addressed to Kenneth W. Goshorn, Office of Congressional and Public Affairs at (202) 382-0731.

*U.S. G.P.O. 1988-201-738:80002

Federal Labor Relations Authority

News Release

500 C Street, SW.
Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT January 4, 1988

As calendar year 1987 drew to a close, the Federal Labor Relations Authority continued to reduce the age and size of its case inventory. There are 207 cases currently pending before the Authority, only 38 of which exceed 180 days in age.

In the final weeks of 1987 the Authority issued several cases of more than routine interest. They are summarized below.

° In Newark Air Force Station and American Federation of Government Employees, Local 2221, 30 FLRA No. 76 (December 29, 1987), the Authority reanalyzed the arbitrability of union (employee) challenges to the establishment of performance standards and elements. The Authority has long held that an employee may challenge, through a negotiated grievance procedure leading to binding arbitration, the conformity of such standards to applicable "law, rule, and regulation" after the employee has been evaluated under the standards. However, in the instant case the employee had not yet been evaluated under the standards which management had implemented. Applying previous Authority precedent, the Arbitrator had found the dispute non-arbitrable.

The Authority set aside that award, found that the matter was arbitrable, and remanded the case to permit the parties the opportunity to seek a resolution of the merits of the grievance. The Authority held that a grievance alleging that management violated applicable law when it established a grievant's performance standards and elements, whether or not it has evaluated the grievant against the standards and elements, is arbitrable unless the parties have excluded it from the scope of their negotiated grievance procedure. In this case, the matter was not excluded by the parties' own agreement and was therefore arbitrable. In so holding, the Authority stated that:

> Resolution of the grievance in this case by an arbitrator would not require an arbitrator to do anything other than what arbitrators do routinely in resolving other disputes, including those involving the exercise of other management rights such as discipline.

. . . . . .

> The question of any impermissible arbitral interference with management's rights must be directed to the merits, including remedy, of an arbitration decision relating to performance standards' consistency with law.
>
> . . . . . .
>
> In deciding the merits of a grievance like the one in this case, an arbitrator may examine the performance standards and elements established by management for the grievant only in order to determine whether they comply with applicable legal and regulatory requirements . . . . If an arbitrator were to find that a grievant's performance plan did not comply with applicable legal requirements, the appropriate remedy would be for the arbitrator to direct the Agency to establish a plan which complies with applicable legal requirements.
>
> . . . . . .
>
> An arbitrator may not determine what the content of the employee's plan should be and may not establish new performance standards. Further, an arbitrator could not impose requirements on an agency beyond those mandated by applicable law and regulation.

The Authority summarized this important holding by stating that, "a grievance alleging that management violated applicable law when it established a grievant's performance standards and elements, whether or not it has evaluated the grievant against the standards and elements, is arbitrable unless the parties have excluded it from the scope of their negotiated grievance procedure."

° In Department of Health and Human Services, Social Security Administration and American Federation of Government Employees, AFL-CIO, Local 3615, 30 FLRA No. 70 (December 22, 1987), the Authority denied certain exceptions to an Arbitrator's award finding national origin discrimination in the performance rating and payment of a high quality step increase to a GS-13 Hearings and Appeals Analyst. In modifying the portion of the award ordering promotion to the next available GM-14 position to an entitlement to priority consideration for such a position, the Authority reaffirmed the proposition that "management's right to make the actual selection for promotion can be abridged only if the arbitrator finds a direct connection between improper agency action and the failure of a specific employee to be selected for promotion."

In a separate opinion in Fort Bragg Association of Educators, NEA and Department of the Army, Fort Bragg Schools, 30 FLRA No. 69 (December 21, 1987) Chairman Jerry L. Calhoun agreed to portions of an Order requiring collective bargaining on certain wage and money-related fringe benefit issues. The Chairman stated that he had consistently dissented from the Authority's position that proposals like these are negotiable under the Statute. The Chairman noted, however, that there is currently a vacancy in the membership of the Authority and stated:

> "Until that vacancy is filled, the issuance of decisions requires agreement between Member McKee and me. I believe that it is vital to the parties' ability to complete their negotiations that the Authority avoid impasse today. I am compelled to place these considerations before my personal adherence to a result my previous dissents would dictate here."

Copies of the decisions, and detailed statistical information on the Authority's case processing activities, are available from the Office of Case Control at (202) 382-0764.

☆U.S. G.P.O. 1988- 201-738:800001

IRX

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT December 9, 1987

The Foreign Service Labor Relations Board (FSLRB), an entity established within the Federal Labor Relations Authority (FLRA) by the Foreign Service Act of 1980 (22 U.S.C. §§ 3901-4173) (the Act), has issued a Decision and Order on a negotiability issue involving the Family Advocacy Program within the U.S. Department of State. The case, entitled American Foreign Service Association (AFSA) and United States Department of State, FS-NG-8 (Dec. 8, 1987), was brought before the Board under section 1007(a)(3) of the Act.

Labor relations in the Foreign Service are governed by the Act whose provisions closely parallel those of the Federal Service Labor-Management Relations Statute (the Statute) under which the vast majority of Federal sector labor relations disputes are resolved. Jerry L. Calhoun, Chairman of the FLRA, is also Chairman of the FSLRB. Tia Schneider Denenberg and Marcia L. Greenbaum, both well-known labor arbitrators, serve as the other two Members of the Board. In interpreting the Act, the Board looks to the Authority's interpretation of the Statute for guidance.

The Board decided the negotiability of a proposal offered by AFSA (the Union) in response to the State Department's (the Agency) announced intent to implement regulations concerning allegations of suspected family abuse or neglect. Specifically, the Union sought to negotiate a proposal to the effect that when investigation into such allegations was made, "if, at the end of the initial investigation period, it is determined that there is cause for further investigation, favorable consideration will be given to any requests for voluntary repatriation."

The Agency asserted that the quoted portion of the proposal was nonnegotiable because it infringed on management's rights to assign employees and assign work under section 1005(a)(2) and (3) of the Act. The Board agreed with the Agency, finding that the proposal directly interfered with those rights and did not constitute a negotiable procedure or an appropriate arrangement under the Act.

The Board found that in light of the parties' own interpretation of what repatriation entails (return of the employee to Washington, D.C. in an alternate personnel

status), such an action, if required upon an employee's request, would involve the exercise of assigning new duties to that employee (and perhaps other employees), reassigning the employee, or granting the employee a period of leave. Citing previous Authority decisions, the Board concluded that management's decision as to the appropriate personnel action to take with respect to the employee would be subjected "to the control of that employee," and therefore the proposal directly interfered with management's rights under the Act.

The Board further concluded that the proposal was not procedural in nature because it directly interfered with management's right to assign employees and assign work (that is assigning the employee to a particular duty station and determining when assigned work would be performed). The Board noted, however, that proposals requiring an agency to consider such an option would be negotiable as procedures. It stated that, "If the disputed language in the proposal before us were revised to allow management to exercise its discretion concerning a request to repatriate, it would not be barred from negotiations by management's rights under the Act."

The Board next found that the proposal was not an appropriate arrangement for employees adversely affected by the exercise of a management right. No discipline or adverse action is authorized under the Family Advocacy Program, whose purpose is protective and therapeutic. Therefore the Board concluded that, ". . . the adverse consequences which the proposal is designed to address -- criminal matters -- are possible actions by other governmental bodies, at most indirectly related to management's action." The Board, however, again stressed that:

> Although we find, for the reasons discussed above, that the specific disputed proposal before us is not within the duty to bargain, the parties may make full use of the bargaining process to explore other ways in which employees could be assured effective access to union representation and/or appropriate legal counsel (locally or stateside) in a manner consistent with law, particularly if they might be in jeopardy of criminal investigation or prosecution because of the FAP.

Copies of the decision may be obtained from the Authority's Case Control Office at (202) 382-0764.

☆U.S. G.P.O. 1987-181-223:60020

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCEMENT | October 26, 1987

The Federal Labor Relations Authority has issued a decision reaffirming the principle that a Federal agency must remain neutral during an election campaign between two labor organizations seeking to represent a bargaining unit of Federal employees. In adopting the conclusions and recommendations of one of its Administrative Law Judges, the Authority determined that the Department of the Army committed an unfair labor practice through actions of its officials which could have been viewed by employees as showing a preference for one of two labor organizations competing to represent a bargaining unit of employees at Fort Sill, Oklahoma.

Two Army officials met in the Old Executive Office Building, Washington, D.C., and dealt with representatives of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters). The meeting concerned the contracting out of work performed by employees at Fort Sill. At the time of the meeting, some Fort Sill employees were represented by the National Federation of Federal Employees (NFFE), and the Teamsters and NFFE were engaged in an election campaign to determine which organization would represent those employees. The Authority's decision found that the meeting interfered with the employees' exercise of their right to freely choose their exclusive representative. Further, the meeting was publicized in a flyer prepared and distributed by the Teamsters just before the election. The Authority found that this action impermissibly interfered with the conduct of a fair election, and ordered that a new election be held.

The decision is entitled Department of the Army Headquarters, Washington, D.C. and U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma, 29 FLRA No. 82 (October 23, 1987). Copies of the decision may be obtained from the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987- 181-223:60019

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release

INFORMATION ANNOUNCEMENT

October 1, 1987

In several related cases the Federal Labor Relations Authority has clarified the right of a union to be given the opportunity to be represented at formal discussions between one or more representatives of the agency and one or more employees in the unit or their representatives. The cases involve interpretation of section 7114(a)(2)(A) of the Federal Service Labor-Management Relations Statute.

Another Authority Information Announcement dated today describes a series of decisions involving the threshold question of what types of meetings constitute "formal discussions" of "grievances." One of those decisions, Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California, 29 FLRA No. 53 (September 30, 1987), also addresses what constitutes an "opportunity to be represented." The Authority also has addressed that question in its supplemental decision and order in Department of the Treasury, U.S. Customs Service, Miami, Florida, 29 FLRA No. 54 (September 30, 1987).

The fundamental question addressed in both cases is whether or not the mere actual presence of a union representative at a formal discussion satisfies the "opportunity to be represented" language of the Statute. In McClellan Air Force Base, the Authority traces the history of administrative and judicial interpretation of the phrase which had culminated in the Authority's decision in Veterans Administration, Veterans Administration Medical Center, Muskogee, Oklahoma, 19 FLRA 1054 (1985). Therein the Authority had held that no unfair labor practice was committed when an agency failed to notify the Union of a formal discussion because three union officials were in fact at the meeting in their capacity as employees. The Authority had stated that "actual representation by an exclusive representative at a formal discussion is sufficient to demonstrate compliance with the requirement . . . that such an exclusive representative 'be given an opportunity to be represented.'"

In McClellan Air Force Base, the Authority now rejects that doctrine, and holds that henceforth management must provide a union with prior notice of such a meeting in order that it may designate a representative of its choosing to attend the formal discussion. The Authority cited the following considerations in reaching its conclusion:

1) There is "considerable practical importance to the union" in being able to choose its representative, for instance, one who might be unaffected by the matter under discussion and/or outside the direct supervisory chain of those management officials conducting the meeting;

2) If "actual representation" was sufficient to meet the requirements of the Statute, the choice of a union representative would or could be made by chance or by an agency.

The Authority concludes that the intent and purpose of section 7114(a)(2)(A) are better served by this interpretation, and states that VA Muskogee will no longer be followed. The Authority reaffirms, however, the reasoning of cases which hold that "actual notice" to the union will suffice if no evidence of formal prior notice is established.

Applying these principles to the facts of the two cases, the Authority finds that in both situations the Agency failed to provide the Union with an opportunity to be represented at the meetings in question, and orders the Agencies to cease and desist from conducting such formal discussions without affording the Unions prior notice and an opportunity to be represented.

Copies of the decisions may be obtained from the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987-181-223:60018

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCEMENT | October 1, 1987

In a trilogy of unfair labor practice cases, the Federal Labor Relations Authority has reaffirmed its standards for determining what constitutes a "formal discussion," and has explained its view of the term "grievance" as used in section 7114(a)(2)(A) of the Federal Service Labor-Management Relations Statute. The three cases are:

-U.S. Department of Justice, Bureau of Prisons, Federal Correctional Institution (Ray Brook, New York), 29 FLRA No. 52 (September 30, 1987);

-Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California, 29 FLRA No. 53 (September 30, 1987); and,

-Nuclear Regulatory Commission, 29 FLRA No. 57 (September 30, 1987).

Under the Statute, a union with exclusive representative status "shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment." Many questions have arisen about what types of meetings, conferences, or interviews are encompassed by the terms "formal discussion" and "grievance." Resolution has been particularly troublesome when the meeting with the bargaining unit employee(s) and management has concerned a statutory appeal (Merit Systems Protection Board appeals; EEO complaint procedures, etc.).

In Federal Correctional Institution, Ray Brook, the Authority reaffirms the analysis that each of the following elements must exist in order for a union's right to attach. There must be (1) a discussion; (2) which is formal; (3) between one or more representatives of the Agency and one or more employees in the unit or their representatives; (4) concerning any grievance or any personnel policy or practices or other general conditions of employment. The "meeting" in the Ray Brook case was scheduled to allow a bargaining unit employee to make an oral reply to a notice of a proposed 30-day suspension, as provided for in 5 U.S.C. section 7513(b). The Authority concludes, that contrary to the allegation in the unfair labor practice complaint, the meeting did not concern a grievance. While

ascribing a broad meaning to the term "grievance", to include statutory appeals as suggested by the court in NTEU v. FLRA, 774 F.2d 1181 (D.C. Cir. 1985), the Authority found that the meeting did not concern a grievance because it concerned only an oral reply to a proposed disciplinary action. In the absence of any final action, no grievance or appeal had been filed. Therefore, there was no "complaint" within the meaning of section 7103(a)(9) which defines grievance under the Statute.

In McClellan Air Force Base, management officials interviewed a bargaining unit employee, called by the Union as a witness, in preparation for an upcoming arbitration hearing. All the elements of a formal discussion were found to be present. The Authority distinguished previous cases which suggested that fact-finding interviews such as the one at issue were to be analyzed solely under section 7114(a)(2)(B) of the Statute. The Authority concluded, again citing the D.C. Circuit's decision in NTEU, that a union has a distinct and separate institutional right to be represented at meetings coming within the meaning of subsection (a)(2)(A). Since the meeting clearly concerned a pending grievance, the failure of management to provide the Union an opportunity to be present was an unfair labor practice in violation of section 7116(a)(1) and (8) of the Statute.

The final case, Nuclear Regulatory Commission, involved a settlement conference concerning a formal EEO complaint. Since the complainant had not been a member of the bargaining unit either at the time she filed the complaint, or at the time any operative facts concerning the complaint arose, a majority of the Authority found that the matter was outside the Union's scope of interest, and hence in these limited circumstances did not constitute a "grievance." Nonetheless, it restressed the broad meaning ascribed to "grievance" as set forth in Federal Correctional Institution, Ray Brook. Member Frazier dissents, stating his view that application of the term "grievance" should not be restricted solely because the meeting with the bargaining unit employee concerned a statutory appeal originally filed while the employee was outside the bargaining unit. In Member Frazier's view, settlement of the complaint could still have a significant impact on the bargaining unit, and therefore the interests which section 7114(a)(2)(A) was designed to protect are implicated by such a meeting.

Copies of the decisions may be obtained by contacting the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987-181-223:60018

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCEMENT | September 29, 1987

The Federal Labor Relations Authority has issued a precedential Decision and Order concerning an agency's obligation under the Federal Service Labor-Management Relations Statute (the Statute) to negotiate during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters which are not covered by the agreement and were not waived by the union during negotiation of the agreement. The Authority concludes that agencies have an obligation under the Statute to bargain on such proposals.

The case is entitled Internal Revenue Service, 29 FLRA No. 12 (September 28, 1987), and the decision is issued pursuant to a remand from the U.S. Court of Appeals for the District of Columbia Circuit. In a previous decision in the case, the Authority had held that the agency was not obligated to bargain over proposals initiated by the National Treasury Employees Union during the term of the agreement unless management sought to initiate changes in established conditions of employment or unless the parties had negotiated a reopener provision in the agreement. 17 FLRA 731 (1985). In NTEU v. FLRA, 819 F.2d 295 (D.C. Cir. 1987), the court set aside that decision and another similar one. The court held that there was no distinction in the Statute between mid-term and other types of bargaining; that clear precedent in the private sector permits such bargaining; and that the purposes and policies of the Statute were served by equalizing the positions of the parties at the bargaining table.

In agreement with the court, the Authority now finds that ". . . the goal of providing more equality in the positions of unions and agencies . . . is promoted by requiring bargaining on union-initiated, mid-term proposals in some circumstances." Looking to private sector experience for guidance, the Authority finds that the duty to bargain in good faith requires bargaining on matters "which are not contained in the agreement unless the union has waived its right to bargain about the subject matter involved." Such waiver may be established by express agreement or bargaining history, but it must be clear and unmistakable.

The Authority holds that a union expressly waives its right to initiate bargaining by agreeing to a "zipper clause." In determining whether a given contract includes such a provision,

the Authority will examine the wording of the provision as well as other relevant provisions of the contract, bargaining history, and past practice.

The second category of waiver -- based on bargaining history -- must be analyzed by determining whether the subject was "fully discussed and explored by the parties at the bargaining table." An example of waiver would be a situation where a union sought to bargain over a subject, but withdrew its proposal in exchange for another provision. While the particular words of proposals offered during contract and mid-term negotiations need not be identical for a waiver to exist, the agency is not relieved of its obligation to bargain merely because the general subject is covered in a collective bargaining agreement.

Based on the record before its Administrative Law Judge in this particular case, the Authority concludes that the union had not clearly and unmistakably waived its right to bargain, and that the agency had not raised any negotiability arguments as a basis for its refusal to bargain.

Copies of the decision may be obtained from the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987-181-223:60018

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release — INFORMATION ANNOUNCEMENT — September 4, 1987

The Federal Labor Relations Authority has clarified the scope of a Federal sector labor organization's duty to represent non dues-paying members. Under section 7102 of the Federal Service Labor-Management Relations Statute (the Statute), Federal employees may form, join or assist a union, or may refrain from this activity. Section 7116(b)(1) of the Statute prohibits a labor organization from interfering with, restraining, or coercing employees in the exercise of this right.

The Authority's decision, entitled Fort Bragg Association of Educators, National Education Association, Fort Bragg, North Carolina, 28 FLRA No. 118 (September 4, 1987), articulates the scope of the "duty of fair representation" and sets forth the standard to be applied in evaluating whether preferential treatment of dues-paying members will be found to be an unfair labor practice. In this case the Authority concludes that the Union did not violate the Statute when it communicated to unit employees that representation in a class-action lawsuit would differ depending on union membership. Therefore the Authority ordered that the complaint be dismissed.

The Overseas Education Association (OEA) filed a lawsuit in Federal district court seeking to clarify the status of certain civilian employees of the Department of the Army schools as Federal employees. In a series of communications to the teachers at Fort Bragg, the Union indicated that dues-paying members would be treated more favorably in terms of prosecution of the litigation. Fort Bragg Department of Defense Dependents Schools and the General Counsel of the Authority charged that such actions violated the Union's obligation to represent "the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership." Section 7114(a)(1).

In reaching its determination that no violation of the Statute had occurred, the Authority traced the relevant administrative and judicial precedent beginning with the Supreme Court's decision in Steele v. Louisville & Nashville R.R. Co., 323 U.S. 192 (1944). Recent cases in the District of Columbia and Tenth Circuit Courts of Appeal had forced a reexamination of the scope of the duty of fair representation, and the Authority, in agreement with the Courts of Appeals, now

(over)

concludes that "Congress adopted for government employee unions the private sector duty of fair representation." This responsibility is an obligation that "stems from a labor union's statutory rights as an exclusive representative of bargaining unit employees." The Authority further stated that:

> . . . we will analyze a union's responsibilities under section 7114(a)(1) in this and future cases in the context of whether or not the union's representational activities on behalf of employees are grounded in the union's authority to act as exclusive representative. Where the union is acting as the exclusive representative of its unit members, we will continue to require that its activities be undertaken without discrimination and without regard to union membership under section 7114(a)(1). We will not, however, extend those statutory obligations to situations where the union is not acting as the exclusive representative, nor will we . . . decide these cases based on whether or not the union's activities relate to conditions of employment of unit employees.

Applying this standard to the Fort Bragg case, the Authority found that the lawsuit was not grounded in any way in the Union's role as exclusive representative; nonmembers could have retained counsel and filed a similar lawsuit; and the collective bargaining agreement did not address or define the employees' status as Federal employees (the subject matter of the lawsuit). Thus the Union was free to represent dues-paying members on the preferential basis.

Copies of the decision may be obtained from the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987- 181-223:60016

IRA

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT August 7, 1987

By issuing 76 cases during the month of July, the Federal Labor Relations Authority was able to further reduce its existing case inventory to an all-time low. The Authority currently has 270 cases pending before it.

Several of the cases issued were of more than routine interest. They are summarized below:

° Department of the Navy, Pearl Harbor Naval Shipyard Restaurant System, Pearl Harbor, Hawaii, 28 FLRA No. 27 (July 24, 1987). This unique representation case presented the Authority with its first opportunity to articulate the standards to be used in analyzing situations where an assertion of the existence of a "schism" is made by a petitioning union. The Hawaii Federal Employees Metal Trades Council (HFEMTC) had represented all non-supervisory employees at the Activity since 1965. The Service Employees International Union, Local 556, AFL-CIO (SEIU) is a constituent local of the HFEMTC, and acts as administrator of the agreement, performing the day-to-day activities of representation. SEIU sought to file a petition for recognition during the extended term of the agreement and outside of the open period provided for in section 7111(f)(3) of the Federal Service Labor-Management Relations Statute (the Statute). It contended that a schism existed between itself and HFEMTC.

The Authority's Regional Director rejected the petition. Noting an absence of Federal sector decisions on the subject, he relied on private sector, National Labor Relations Board case law. The Regional Director found that the conflicts asserted by SEIU were essentially matters relating to the internal procedures of HFEMTC; they did not involve a fundamental policy dispute at the highest level of a Union; there was no evidence that any realignment, disaffiliation, or expulsion had occurred; and there was no basic intra-union conflict or confusion in the bargaining relationship with the Activity.

The Authority found no compelling reason for granting review under section 2422.17 of its Rules and Regulations. It found that the Regional Director had properly used private sector case law as a guide in rendering his decision. That case law supports the proposition that a schism will be found to exist only in circumstances where: (1) a basic intra-union conflict exists over fundamental policy questions within the

highest level of an international union or federation; and (2) the conflict causes employees in the local unit to take action, based on the conflict itself, which creates confusion in the bargaining relationship so that stability can only be restored through an election.

Since these conditions were not met, the application for review of the Regional Director's Decision and Order was denied.

° The Authority issued three negotiability decisions in cases involving a large quantity of complex proposals. Issuance of these cases resolved some 117 disputed provisions, and provided significant guidance in the negotiability area. The cases are:

-- Illinois Nurses' Association and Veterans Administration Medical Center, Hines, Illinois, 28 FLRA No. 35 (July 29, 1987).

-- National Union of Hospital and Health Employees, AFL-CIO, District 1199 and Veterans Administration Medical Center, Dayton, Ohio, 28 FLRA No. 65 (July 31, 1987).

-- American Federation of Government Employees, Local 1770 and Department of the Army, Fort Bragg Dependent Schools, Fort Bragg, North Carolina, 28 FLRA No. 66 (July 31, 1987).

° Department of Defense Dependents Schools, Washington, D.C. and Department of Defense Dependents Schools, Germany Region, 28 FLRA No. 33 (July 28, 1987). On remand from the District of Columbia Circuit Court of Appeals, the Authority reversed a previous decision in the case (19 FLRA 790), and held that the Agency was required under section 7114(b)(4) of the Statute to provide information concerning discipline of management officials and supervisors to the Union. The Union was representing a bargaining unit employee charged with making false statements. The Union requested the information (and agreed to receiving it in sanitized form) in order to prepare a possible disparate treatment argument on behalf of the employee it was representing.

The Authority concluded that the information sought was necessary for the Union to effectively develop and present its arguments in the disciplinary action proceeding. Since the information was necessary and relevant in assisting the Union in fulfilling its representational responsibilities under the Statute, the refusal of the Agency to provide it constituted an unfair labor practice.

Copies of the decisions may be obtained from the Authority's Office of Case Management at (202) 382-0764.

*U.S. G.P.O. 1987-181-223:60015

IRX

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT June 25, 1987

In a case involving two consolidated unfair labor practice complaints, the Authority has addressed the role of an agency head in reviewing provisions of a collective bargaining agreement under section 7114(c) of the Federal Service Labor-Management Relations Statute. The case is Department of Defense Dependents Schools (Alexandria, Virginia), 27 FLRA No. 72 (June 24, 1987). Unlike contract provisions which are mutually agreed upon by the parties or are imposed by the Federal Service Impasses Panel itself, a majority of the Authority concluded that provisions imposed by an interest arbitrator in a Panel-directed proceeding are not subject to review by an agency head under section 7114(c) of the Federal Service Labor-Management Relations Statute (Statute). Member Henry B. Frazier III filed a separate opinion, concurring in part and dissenting in part.

During bargaining between the Agency and the Overseas Federation of Teachers, AFT, AFL-CIO, the parties sought the assistance of the Panel in resolving an impasse. The Panel directed that mediation/arbitration be conducted by its then Chairman. The arbitrator resolved certain matters and referred another issue to the Panel for resolution. Subsequently, the Agency head, acting under section 7114(c), disapproved four provisions: two imposed by the interest arbitrator, one imposed by the Panel, and one which had been mutually agreed upon by the parties. The Agency did not file exceptions to the provisions imposed through arbitration under section 7122 of the Statute.

The majority of the Authority found that an arbitration award, including one resulting from a Panel-directed interest arbitration proceeding, is reviewable only through the filing of exceptions under section 7122 of the Statute. In the absence of timely-filed exceptions, the award becomes final and binding and an agency's refusal to take actions necessary to implement the award violates the Statute. The majority further found that the provisions imposed by the Panel and agreed upon by the parties--provisions which the Agency head was empowered to review under section 7114(c)--

were not inconsistent with law, rule, or regulation. Accordingly, the Agency head's disapproval of those provisions was improper and also constituted unfair labor practices.

The Agency was ordered to rescind its disapproval of the four provisions; to incorporate the provisions into the collective bargaining agreement on a retroactive basis; to make the Union and bargaining unit employees whole for losses suffered as a result of the disapproval, and to cease and desist from such disapprovals in the future.

Member Frazier concurred in the majority's conclusion that the Agency's disapproval of the four provisions violated the Statute, based upon his agreement that the Agency failed to comply with the requirements for filing exceptions to arbitration awards under section 7122(b). Member Frazier agreed that an arbitration award, including one resulting from a Panel-directed interest arbitration proceeding, is reviewable by the Authority only through the filing of exceptions under section 7122 of the Statute. However, he disagreed with the majority's conclusion that agency heads are not empowered under section 7114(c) to review provisions directed to be included in an agreement by an interest arbitration award, analogizing such review to that which would be performed in determining whether to file exceptions to the award with the Authority pursuant to section 7122. Member Frazier would reconcile the provisions of the Statute concerning exceptions to arbitration awards and agency head review by finding that the filing of timely exceptions operates as a constructive disapproval under section 7114(c). If the union were to then file a petition for review of negotiability issues raised by the disapproval, the Authority could consolidate the related negotiability and arbitration appeals for decision.

Copies of the decision may be obtained from the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987-181-223:60012 B

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REGION 3

INFORMATION ANNOUNCEMENT

Immediate Release June 11, 1987

The Washington Regional Office of the Federal Labor Relations Authority today issued the results of the tabulation of ballots cast in the mail ballot election conducted by the Authority among some 12,800 eligible GS-2152 Air Traffic Control Specialists located at over 450 terminal and center facilities of the Federal Aviation Administration. Eligible voters were given the choice of whether or not they desired to be represented for the purpose of exclusive recognition by the National Air Traffic Controllers Association, affiliated with Marine Engineers' Beneficial Association, AFL-CIO (NATCA). The tally of ballots reflected that 10,810 valid votes were cast, an 84.6 percent voter turnout. 7,494 votes were cast for NATCA, 3,275 votes were cast against exclusive recognition. In addition, there were 41 unresolved challenged ballots. Inasmuch as the challenged ballots were insufficient in number to affect the results of the election, the Authority today certified that a majority of the valid votes had been cast for NATCA. Pursuant to the Authority's Rules and Regulations, absent the filing of objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, within five (5) days of the issuance of the tally, the Regional Director of the Authority's Washington Regional Office will certify NATCA as the exclusive collective bargaining representative of the Federal Aviation Administration's GS-2152 Air Traffic Control Specialists.

*U.S. G.P.O. 1987-181-223:60011

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCEMENT | June 9, 1987

The Federal Labor Relations Authority issued several decisions of more than routine interest during late May. Furthermore, despite sharply increased case receipts, the Authority was able to continue to reduce the size and age of its case inventory. Three decisions are briefly summarized below:

° National Treasury Employees Union and Internal Revenue Service, 27 FLRA No. 25. On remand from the U.S. Court of Appeals for the District of Columbia Circuit, the Authority found that a proposal which sought to establish the rate of incentive pay for bargaining unit employees was a proper subject of negotiations. The Court had found that the proposal "did not come within the nonbargainable management rights to assign work and direct employees." However, it left to the Authority the additional questions of whether the proposal concerned a pay matter specifically provided for by statute (and hence not a "condition of employment"), and/or whether the proposal interfered with management's right to determine its budget. The Authority answered both questions in the negative. The incentive award money is not wages or salary, and the amount to be provided is left to the agency's discretion by law. An agency is not obligated to institute or continue such a program, and the money awarded thereunder "is unlike . . . money-related fringe benefits . . . but rather is similar to money awarded to employees for suggestions under an agency's suggestion program." Further, the Agency did not demonstrate that implementation of the Union's proposal would result in significant and unavoidable increases in costs which would not be offset by compensating benefits. To the contrary, the proposal specifically links the amount of incentive money to be awarded to increases in an employee's productivity, which would directly benefit the Agency.

° Veterans Administration, Washington, D.C., 27 FLRA No. 31. The Authority found that the Agency committed an unfair labor practice when it failed to afford the Union adequate prior notice and an opportunity to consult regarding the decision to withhold a comparability pay increase. The Union held national consultation rights under section 7113 of the Statute, and was entitled to notice of substantive changes in conditions of employment proposed by the Agency, and to have its views and recommendations considered before

an agency takes final action. The granting of such pay increases to VA nurses, which had automatically occurred over a long period of time, was a condition of employment subject to national consultation rights. The Authority ordered the Agency to consult with the Union and cease and desist from failing to do so in the future.

° Department of the Treasury, Internal Revenue Service (Washington, D.C.); and Internal Revenue Service, Hartford District (Hartford, CN), 27 FLRA No. 45. The Authority found that the Agency committed an unfair labor practice when it unilaterally discontinued certain break room conveniences. When the Agency had relocated, an agreement had been reached to have a break room with two small refrigerators, a sink, and four coffee pots. Later a microwave oven, snacks, and a larger refrigerator were added. The established practice of management permitting, and even contributing to, such conveniences cannot be changed without collective bargaining. The Authority issued a status quo ante Order.

Copies of the decisions are available, upon request, from the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987- 181-223:60010

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT June 1, 1987

The Federal Labor Relations Authority has articulated a new approach for determining whether and to what extent an award of backpay is warranted when an Agency has failed to fulfill its statutory duty to bargain. The case is Federal Aviation Administration, Washington, D.C., 27 FLRA No. 36 (1987).

The case was remanded to the Authority by the U.S. Court of Appeals for the District of Columbia Circuit. In its previous decision (20 FLRA No. 33), the Authority affirmed an Administrative Law Judge's finding that the Agency violated the Federal Service Labor-Management Relations Statute when it refused to bargain over the procedures to be used when implementing a reorganization. However, the Authority declined to order a "make-whole" backpay remedy because the evidence was insufficient to support a finding that "but for" the improper action employees would not have suffered a reduction in the premium pay because of a change in their hours of work.

The court agreed with the Authority's formulation of a "but for" test in awarding backpay, but found that the Authority's application of the test in impact and implementation bargaining cases was contrary to the Back Pay Act. The court directed the Authority to fashion an approach for dealing with the difficulties of deciding the need for backpay remedies in situations where the results of any bargaining which has not occurred were unknown and highly speculative.

Squarely addressing that issue in its remand decision, the Authority reiterated the necessary elements for an award under the Back Pay Act: (1) that an "unjustified or unwarranted personnel action" has occurred; (2) that the action resulted in a "withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee(s)," and (3) that "but for the unjustified action, the employee(s) would not have suffered the withdrawal or reduction."

The Authority explained that the first requirement is met in a refusal-to-bargain case when it has been shown that an agency has committed a refusal-to-bargain violation. The second requirement is met when it has been shown that the agency action which gave rise to the refusal to bargain resulted in a loss of pay for affected unit employees.

Noting that resolutions on the third ("but for") element cannot be made with certainty in refusal-to-bargain cases, the Authority reasoned that the required showing for this element is best approximated by the results of the bargaining it orders in such cases. Thus, the Authority concluded that where an agency has committed a refusal-to-bargain violation concerning a change in a condition of employment and the change resulted in a loss of pay under the Back Pay Act, the Authority will issue a bargaining order and the payment of backpay consistent with the outcome of the ordered bargaining.

Under this approach, if the agreement which results from the ordered bargaining (with or without the assistance of the Federal Service Impasses Panel) modifies the loss of pay which arose out of the agency's unilateral action, the agency will be required to provide backpay to the affected employees consistent with this agreement unless the parties' themselves agree otherwise.

The Authority explained that this approach implements the expectation of Congress that bargaining as required by the Statute carries the prospect of modifying the implementation of agency actions which change conditions of employment and is based on the requirement that agencies give exclusive representatives advance notice of changes which affect conditions of employment. The Authority also stated that this approach is consistent with the Authority's policy of ensuring that the parties and the Federal Service Impasses Panel retain the flexibility they require to fashion agreements which are most appropriate for the parties' circumstances.

A copy of the decision is available, upon request, from the Authority's Office of Case Management at (202) 382-0764.

☆U.S. G.P.O. 1987- 181-223:60010

1R4

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release **INFORMATION ANNOUNCEMENT** May 21, 1987

The Federal Labor Relations Authority, although finding three Union proposals to be nonnegotiable, has counseled the parties to conduct their future negotiations in a fashion more likely to lead to agreement rather than litigation. The case is entitled American Federation of Government Employees, AFL-CIO, Local 1858 and U.S. Army Missile Command, The U.S. Army Test, Measurement, and Diagnostic Equipment Support Group, The U.S. Army Information Systems Command-Redstone Arsenal Commissary, 27 FLRA No. 14 (1987).

All three proposals would require specific management officials to perform certain duties (Immediate Supervisor to conduct preliminary investigation and discussion prior to deciding whether disciplinary action is warranted; Supervisor to conduct counseling session with employee before submitting formal request for fitness for duty examination; Installation Commander to authorize public broadcast concerning inclement weather or emergency conditions).

In finding the proposals to be nonnegotiable, the Authority reaffirmed its consistent holding that the "right to assign work . . . encompasses the right to assign specific duties to particular individuals [.]" The proposals, as worded, interfered with the right to assign work under 5 U.S.C. § 7106(a)(2)(B). However, it was also clear to the Authority that the proposals' defects were "subsidiary to the basic intent" of the proposals the general requirements of which would have been otherwise negotiable.

The Authority stated that despite its long-standing decisions determining the nonnegotiability of provisions which assign tasks to specific personnel, "the matter continues to be a source of disputes." The Authority advised Union representatives to "carefully word their proposals and explain their intent to insure that the assignment defect . . . does not arise." By the same token, "management representatives should be able to recognize such potential defects early in negotiations and to signal their willingness to discuss a proposal which eliminates the assignment defect."

A copy of the decision is available, upon request, from the Authority's Office of Case Management (382-0764).

☆U.S. G.P.O. 1987-181-223:60010

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release | INFORMATION ANNOUNCEMENT | May 7, 1987

During late April the Federal Labor Relations Authority issued several decisions of more than routine interest. Although new filings of cases during the month were unusually high, the Authority was able to preserve an inventory of less than 300 cases, and continued to reduce the average and median age of its case inventory. The particularly significant cases are summarized below, and copies are available, upon request, from the Authority's Office of Case Management (382-0764).

° American Federation of Government Employees, Local 12, AFL-CIO and Department of Labor, 26 FLRA No. 89 (April 29, 1987). This case analyzes the interplay of the negotiability appeal process and other dispute resolution procedures. It has been the subject of a separately issued information announcement.

° Department of the Air Force, Sacramento Air Logistic Center, McClellan Air Force Base, California, 26 FLRA No. 83 (April 28, 1987). The Authority found that an agency committed an unfair labor practice when it refused to grant an employee official time and travel and per diem expenses to appear as a witness in an unfair labor practice hearing before an Administrative Law Judge of the Authority pursuant to a subpoena issued by the Regional Director of the Authority. The employee in question had been reassigned to a different activity in a different geographical location than the one involved in the hearing. The Authority has interpreted section 2429.23 of its Rules and Regulations and 5 U.S.C. § 7131(c) to require the granting of official time and expenses for all phases of participation in proceedings before the Authority.

° Service Employees International Union, Local 556, AFL-CIO and Department of the Navy, Marine Corps Exchange, Kaneohe Bay, Hawaii, 26 FLRA No. 95 (April 30, 1987). The Authority found that proposals to allow intermittent non-appropriated fund employees to grieve their terminations were proper subjects of collective bargaining. The Authority distinguished cases finding that probationary employees do not have such access to

the negotiated grievance procedures. Intermittent employees are not required to serve a probationary period, and their employment status is based on weekly work schedules not related to the hiring and evaluation process. Thus the Authority found no basis for excluding them from the coverage of the grievance process.

° Department of Commerce, Bureau of the Census and General Services Administration, 26 FLRA No. 88 (April 29, 1987). Four consolidated unfair labor practice cases involving two agencies were decided in one Decision and Order. The cases involved alleged unlawful interference with the right of an employee to solicit membership, distribute literature, and meet with employees and non-employee union representatives. Although each of the consolidated cases involved different factual situations, the Authority generally concluded that the employee must be permitted, on behalf of a "rival union", to meet and distribute literature in outdoor public areas and in indoor non-work areas during non-work times.

☆U.S. G.P.O. 1987-181-223:60009

IRX

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release INFORMATION ANNOUNCEMENT May 5, 1987

The Federal Labor Relations Authority has clarified the proper use and inter-relationship of the negotiability appeal process and other dispute resolution procedures. In American Federation of Government Employees, Local 12, AFL-CIO and Department of Labor, 26 FLRA No. 89 (April 29, 1987), the Authority dismissed the Union's petition for review "without prejudice to its right to (re)file a negotiability appeal if the conditions governing review of negotiability issues are met and if the Union chooses to file such an appeal."

The case arose as a result of a reorganization within the Agency. The Union offered fourteen proposals concerning the reorganization. Four of them were rejected by the Agency on the grounds that they were governed by provisions in the parties' agreement or because no change had been made in the areas covered by the proposals sufficient to give rise to a duty to bargain. The Agency did not contend that these four proposals were "inconsistent with law, rule, or regulation." The Authority resolved the other ten proposals under its negotiability appeal procedures.

The Authority concluded that with respect to the remaining four disputed proposals, conditions governing review of negotiability issues provided for in 5 C.F.R. § 2424.1 had not been met, and the threshold duty to bargain question must be addressed "in other appropriate proceedings, such as the parties' negotiated grievance procedure or the unfair labor practice procedures under section 7118 of the Statute." Negotiability appeals will be entertained only when an agency's refusal to bargain is based on alleged inconsistency of the proposal with law, rule or regulation.

☆U.S. G.P.O. 1987-181-223:60008

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release

May 4, 1987

APPOINTMENT TO FOREIGN SERVICE LABOR RELATIONS BOARD

The Federal Labor Relations Authority announced today the reappointment of Ms. Tia Schneider Denenberg to the Foreign Service Labor Relations Board. The Board administers the conduct of elections and resolutions of labor-management disputes involving foreign service personnel.

Ms. Denenberg's appointment, beginning on April 30, 1987 and expiring on April 29, 1990 represents her first full term as a Member, having previously been appointed to complete the unexpired term of a former member.

Ms. Denenberg has enjoyed a notable career as an arbitrator, educator, and as an author of several publications designed to provide insight and guidance to labor-relations practitioners.

She holds a Bachelor of Science Degree from the School of Industrial and Labor Relations, Cornell University, and has accomplished graduate studies at the University of Cambridge. Ms. Denenberg resides in Red Hook, New York.

*U.S. G.P.O. 1987-181-223:60008

IRX

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

Immediate Release — INFORMATION ANNOUNCEMENT — April 28, 1987

The Federal Labor Relations Authority has issued its first Decision and Order in what can be described as a "Smoking -- No Smoking" case. In National Association of Government Employees, Local R14-32 and Department of the Army, Fort Leonard Wood, Missouri, 26 FLRA No. 73 (April 20, 1987), the Authority found that four Union proposals offered in response to the Agency's implementation of a "Policy on Controlling Smoking" were proper subjects of collective bargaining. The Army was ordered to bargain concerning the proposals upon request.

Smoking restrictions in the workplace are becoming commonplace, and the General Services Administration (GSA) has recently promulgated regulations governing smoking in GSA-controlled Federal buildings. However in Fort Leonard Wood, the buildings were not subject to GSA control. In rejecting the Army's assertions of non-negotiability of Union proposals to expand the areas where bargaining unit employees would be permitted to smoke, the Authority made the following findings:

- the proposals involved a "condition of employment" inasmuch as bargaining unit employees performed duties in the areas in question, and violators of the policy could be subject to discipline;

- the effect of the proposals on non-bargaining unit employees was limited and would not so substantially affect their rights as to render the proposals non-negotiable;

- the Agency had not established a "compelling need" for its regulations. While restricting smoking may generally relate to mission accomplishment, the particular restrictions set forth were not essential to those purposes.

In an unrelated Authority case, Administrative Law Judge Samuel A. Chaitovitz has found that a unilateral change in smoking restrictions without opportunity to bargain constituted an unfair labor practice. The Authority adopted that recommended decision inasmuch as no exceptions were filed. Department of Health and Human Services, Office of Hearings and Appeals, Region I, (Boston, Massachusetts), Case No. 1-CA-60076 (April 14, 1987). The Order, however, is without precedential effect.

* U.S. G.P.O. 1987-181-223:60008

Federal Labor Relations Authority

Washington, D.C. 20424

Immediate Release

April 2, 1987

INFORMATION ANNOUNCEMENT

The last two months have been very productive ones for the Federal Labor Relations Authority. The Authority issued 158 cases thereby further reducing its existing case inventory to a total of 287, the lowest in the Authority's history. Among the cases issued in the last two months were many of more than routine interest. Several are synopsized below.

- Colorado Nurses Association and Veterans Administration Medical Center, Ft. Lyons, Colorado, 25 FLRA No. 66. The Authority held that professional and medical employees of the Veterans Administration, Department of Medicine and Surgery are not, as a general matter, excluded from coverage under the Federal Service Labor-Management Relations Statute. Based on the legislative history of Title 38 of the Code establishing the personnel system, the history of collective bargaining between the parties, and certain judicial interpretations, the Authority concluded that no direct conflict exists between this VA unique personnel system and the ability of the employees to bargain collectively. Alleged compelling need for Agency regulations concerning conditions of employment of those employees should be considered on a case-by-case basis.

- National Treasury Employees Union and Department of Health and Human Services, Region V, Chicago, Illinois, 25 FLRA No. 94. The Authority found that inclusion of excepted service employees in the grievance, arbitration, and adverse action articles of a collective bargaining agreement was a proper subject of negotiations. While non-preference eligible excepted service employees do not enjoy a right of appeal to the Merit Systems Protection Board, there is no indication that Congress intended to similarly foreclose access to mutually agreed upon grievance procedures.

(more)

- Social Security Administration and American Federation of Government Employees, 25 FLRA No. 37, Health Care Financing Administration and American Federation of Government Employees, Local 1923, 25 FLRA No. 59. The Authority set aside two arbitration awards which directed agencies to issue higher performance appraisal ratings to employees, stating that while an arbitrator may conclude that management has erred in preparing an appraisal and direct management to reevaluate an employee's work, the arbitrator may not substitute his or her judgment for management's judgment on what employees' ratings should be.

- Long Beach Naval Shipyard, Long Beach, California, and Long Beach Naval Station, Long Beach, California, 25 FLRA No. 84. The Authority affirmed the Administrative Law Judge's conclusion that the Respondents violated the Statute by action of their police officer in issuing a criminal citation to an employee, who was engaged in protected activity under the Statute, and adopted the Judge's recommendation that the Respondents be ordered to cease and desist from this conduct.

The issuance of a large number of decisions in the last two months reflects the Authority's continued progress toward achieving its goal of timely processing of all cases coming before it. There remain a relatively small number of aged cases (over 6 months old) pending before the Authority--most of them particularly complex negotiability cases. However, the agency believes that they can soon be resolved.

Federal Labor Relations Authority

Washington, D.C. 20424

ERRATA April 2, 1987

Report of Case Decisions Number 421 (January 15, 1987) pages 171 and 172. 1/

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2. Insert attached pages.

1/ Pages of a notice from another case were inadvertently mingled with 25 FLRA No. 11.

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☆U.S. G.P.O. 1987-181-223:60006

news release

Federal Service Impasses Panel

500 C Street, SW. Washington, D.C. 20424

Information Release February 18, 1987

GOODMAN AND KRUGER TO BE REAPPOINTED TO PANEL

On February 3, 1987, President Reagan announced his intention to reappoint N. Victor Goodman and Daniel H. Kruger as members of the Federal Service Impasses Panel. Their previous terms having expired on January 10, 1987, the President will reappoint them for 5-year terms. The seven-person Panel, an entity within the Federal Labor Relations Authority, provides assistance to Federal agencies and unions in resolving negotiation impasses.

Mr. Goodman, appointed to the Panel in 1982, currently practices law in Columbus, Ohio, as partner in the firm of Benesch, Friedlander, Coplan and Aronoff. He belongs to the Labor Law Section of the Ohio State Bar Association and is a member of the American Bar Association's Committee on Development of Law Under the National Labor Relations Act. Mr. Goodman was also a permanent umpire under the National Coal Mine Construction Agreement between the United Mine Workers and the Association of Bituminous Contractors. He is a member of the Ohio Board of Regents, the Ohio State Underground Parking Commission, and was a Federal Bar Examiner for the United States District Court for the Southern District of Ohio from 1973 to 1976.

Mr. Goodman was graduated from Yale University with a B.A. degree in 1957 and received a J.D. degree from Harvard Law School in 1961. Currently residing in Bexley, Ohio, Mr. Goodman is married and has four children.

Mr. Kruger, also first appointed in 1982, has been associated with the Michigan State University since 1956 when he helped establish the Graduate School of Labor and Industrial Relations. From 1961 to 1966 he headed its Personnel Management Program Service, later becoming the Director of the Training Center for Employment Security Personnel. He has been Professor of Industrial Relations since 1966 and is a recipient of the Michigan State University Distinguished Faculty Award.

Active as a factfinder and arbitrator of labor disputes, Mr. Kruger has also served as chairman of the Michigan Manpower Commission. His advice on matters relating to manpower has been sought and received by many groups, including a number of Congressional committees. He also has written 3 books and more than 100 articles on a variety of industrial relations subjects.

Mr. Kruger was graduated from the University of Richmond in 1949 with a B.A. degree, and from the University of Wisconsin with a M.A. degree in 1951 and a Ph.D. degree in 1954. He currently resides in East Lansing, Michigan.

Other members of the Federal Service Impasses Panel, all of whom serve on a part-time basis, are Chairman Roy M. Brewer of Tarzana, California; Thomas A. Farr of Raleigh, North Carolina; Robert G. Howlett of Grand Rapids, Michigan; Jean T. McKelvey of Rochester, New York; and Susan S. Robfogel also of Rochester, New York.

For further information

telephone (202) 382-0981

☆U.S. G.P.O. 1987-181-223:60005

Federal Labor Relations Authority

News Release

Washington, D.C. 20424

PRESS RELEASE

IMMEDIATE RELEASE INFORMATION ANNOUNCEMENT February 2, 1987

METHOD OF PAYCHECK DELIVERY OR DISTRIBUTION FOUND PROPER SUBJECT OF COLLECTIVE BARGAINING

The Federal Labor Relations Authority ruled today that Union proposals relating to the method of delivering employees' paychecks are a proper subject of negotiations between labor and management. The two cases arose at Navy activities and both had been remanded to the Authority by the U.S. Court of Appeals for the Ninth Circuit which reversed the Authority's previous holdings (16 FLRA 619 and 16 FLRA 623) that the subject involved the methods and means of performing work. The decision overrules some eleven previous Authority decisions, and will also permit expeditious resolution of pending cases involving similar disputed union proposals.

The disputes had their genesis in a Navy decision to require mailing or direct deposit of paychecks (at least as to new hires). Historically employees had enjoyed the option of having their paychecks personally delivered at the worksite. After accepting and adopting the Court's finding that such matters were not a "method and means of performing work" so as to be negotiable at the agency's election only, the Authority went on to address the agency's further allegations of non-negotiability.

First, the Authority found that even though the proposals related to "new hires" or "new bargaining unit employees", they involved conditions of employment of bargaining unit employees. The method of paycheck delivery "is inextricably bound to a fundamental condition of employment: pay." Next the Authority rejected the Navy's argument that the anticipated savings to be realized by mail delivery either created a compelling need for its regulations, or were sufficient to warrant a finding that the proposals interfered with management's right to determine its budget. Finally, the Authority reasoned that the fact that some person or persons would have to maintain responsibility for actually accomplishing the delivery by whatever method the employees might choose did not render the proposal non-negotiable as an interference with the rights to assign work and employees or the right to determine organizations. The Authority noted that even under the regulation, exceptions for hand delivery could still be made on a case-by-case basis.

The cases are entitled Federal Employees Metal Trades Council, AFL-CIO and Department of the Navy, Mare Island Naval Shipyard, Vallejo, California and American Federation of Government Employees, Local 1533 and Department of the Navy, Navy Commissary Store Region, Oakland and Navy Commissary Store, Alameda, California, 25 FLRA No. 31 (1987).